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(b) what steps the Government propose to take to popularize the same and increase the supply of smoked and cured fish as food resources at this critical time?

THE HON. SRI V. KURMAYYA :—“(a) The manufacture of smoked and cured fish was undertaken by the Department first to meet the requirements of the Army. On the termination of the war, the demand for the products from the Army began to fall off and finally the supply was discontinued. As the production of smoked and cured fish of high quality has been established as a new industry with a number of well-equipped production centres on the east and west coasts, it was considered desirable to continue it to popularise the products among the civil population. But the fish eating population did not take to these products, especially smoked fish, the peculiar flavour of which was not relished by them. Advertisement and vigorous propaganda carried on within and outside the Province had no effect in pushing the sales up. Finally, the production was completely stopped.

“(b) In view of the fact that the fish eating population does not relish the smoked and cured fish, it is very difficult to popularize them rapidly.”

[Note.—An asterisk (*) at the commencement of a speech indicates revision by the Member.]

II.—GOVERNMENT MOTION.

DRAFT NEW CONSTITUTION OF INDIA—cont.

MR. PRESIDENT :—“A number of amendments have been received. Are these amendments to be moved and seconded formally? I would like to know what was done in the other House.”

THE HON. SRI KALA VENKATA RAO :—“They must formally be moved and seconded.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“On a point of information, Sir, I was given to understand that the Government gave option to the members to vote as they like.”

THE HON. SRI KALA VENKATA RAO :—“There was no voting in the Assembly.”

MR. PRESIDENT :—“We shall decide later on the question whether there should be voting on amendments.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“The Hon. Minister has stated that there was no voting.”

MR. PRESIDENT :—“Then, the whole thing will be forwarded to the Constituent Assembly.”

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11-15
a.m.

* SRI N. RANGA REDDI :—“ Mr. President, Sir, I move—

‘and on such consideration this Council is of opinion that the following amendments be made in the Draft Constitution of India :—

“ That suitable provisions be inserted in the Draft Constitution for the economic and educational improvements of backward areas in the new States that are to be created under the New Constitution, and that for this purpose sufficient safeguards be introduced by way of greater representation of members in the Legislature not insisting on the usual ratio of population and that a special grant be given by the Union Government to backward areas, similar to the provisions inserted for the ‘welfare of the Tribal areas’ in the Draft Constitution.”

“ Sir, I beg to move this amendment only for the purpose of realising the objectives, in as short a time as possible, contained in Part IV of the Draft Constitution and it is for that purpose alone that I move this amendment. And when I move this amendment, I should not be understood that I am in favour of the formation of provinces on a linguistic basis immediately. It is true, Sir, that provinces will have to be formed on a linguistic basis and the Congress stands committed to the principle of formation of linguistic provinces. But that is a decision which has been arrived at long before, i.e., in the year 1920 or so. In the meantime, much water has flown under the bridge. That was a resolution which was assented to at a time when all of us were always thinking of one undivided India. But we have seen that India has been divided into two Dominions, Pakistan and the Indian Union. We know, Sir what problems have been created after August 15th and therefore it is very necessary that we should examine this question afresh and see whether provinces are to be formed immediately on the basis of linguistic principle.”

MR. PRESIDENT :—“ Your amendment is not an amendment to anything in the Constitution but it is something like a resolution.”

* SRI N. RANGA REDDI :—“ Otherwise, Sir, it is impossible to bring up what I have to say.”

MR. PRESIDENT :—“ It is not so much an amendment to anything in the Constitution as a separate resolution.”

* SRI N. RANGA REDDI :—“ Sir, my submission is that when the provinces are being formed on linguistic basis, so many problems are cropping up between these new provinces. I may illustrate by saying that if this composite province of the Madras Presidency is to be bifurcated or trifurcated—Tamil, Telugu, Kerala or Kannada—and if all these provinces are brought into existence, the borders will have to be decided and in deciding this question, so many problems will arise and the question of Madras will present serious difficulties. It is true, Sir, that I do not see

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that the question of Madras will bring in so many difficulties as the division of India into Pakistan and the Indian Union. When all our energies are to be bent for the purpose of improving the Indian Union, is it necessary that we should litter away our energies and divide ourselves into various warring camps and fight one another and say that Madras should form part of the Andhra province or Madras should form part of Taminad or Kerala. Whatever it be, I submit that this is a problem which could wait for some time and it is not so immediate and when we have waited for such a long time, we can wait for a few more years. I only submit that some safeguards ought to be introduced along with the formation of the Andhra province.

“ Sir, the Draft Constitution provides that so far as the election to the Legislature is concerned, there should be one representative for one lakh of population and the number also of the Members of the Legislature in a state has been fixed to 350 and so on. I submit that if the Madras Province is to remain as it is and that if the representation ought to be given at the rate of one for every lakh of population, immediately the number will exceed the limit and it is not possible to limit the number to the number mentioned in the Draft Constitution. What I submit is that the number may be increased to suit the circumstances and provide for larger representation.

“ The object of the Draft Constitution is to bring the people living in the backward areas to the level of the people living in the most advanced areas and that is the very reason why special safeguards have been provided for the improvement of the people in the tribal areas. So also, some such provision ought to be introduced for the improvement of the people living in the backward areas. Articles 6 and 301 of the Draft Constitution provides for the improvement of backward areas so far as the educational facilities are concerned. I may submit that if educational facilities are granted, the people will improve their status not only in regard to education but with regard to their economic status also. I may submit that if this principle of one representative for one lakh of population is to be followed strictly, the people who are living in thinly-populated areas will be at a great disadvantage and the people living in densely-populated areas will get very great advantage. So far as the Andhra province—that is likely to come in the future—is concerned, the people living in the coastal districts will be at a very great advantage when compared with the people living in Rayalaseema. It is thinly populated and the people will suffer in representation and it is for that very reason that the Sri Bagh Pact has come into existence, and the Sri Bagh Pact says that representation should not be according to population but according to districtwar basis. But I may also submit that representation according to districtwar does not mean according to the districts that may be brought into existence subsequent to the date of Sri Bagh Pact but according to the number of districts that were existing on the date the Sri Bagh Pact came into existence. We want to maintain parity between the coastal districts and the Rayalaseema districts. Rightly or wrongly, there is an

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apprehension in the minds of the people living in Rayalaseema that unless these safeguards are introduced in the New Constitution, they may suffer; they may go to the wall; their economic safety may be impeded and their educational facilities may not be advanced and therefore they have asked for these safeguards. It is not my personal opinion alone. About five months ago, a conference was held at Nandyal which was also attended by all the important people living in Rayalaseema not only people who belong to the Congress creed but also people who were outside the Congress fold and they acclaimed with one voice that if the Andhra province is to come into existence, it ought to come into existence only with the necessary safeguards being provided for Rayalaseema irrespective of the fact that the population in the Rayalaseema districts is much less than in the coastal area districts. I may also submit that it is not a question of representation in the Legislature but it is also a question of representation in the Ministry. Sri Bagh Pact was arrived at in the year 1938. It was solemnly signed by the President of the then Andhra Provincial Congress Committee and was also approved in the open session of the Andhra Provincial Congress that there should be equal representation both in the Legislature and in the Ministry. But I am sorry to say that that provision has not been adhered to even when we had a Premier who hailed from Andhradesa. When the elections were held in the year 1946, we had only one representative from the Rayalaseema and until to-day we could not have equal representation in the Ministry along with the Circar people. Therefore, I submit that these provisions are absolutely necessary in the Draft Constitution. I may be attacked that what I am saying goes against the principles enunciated in the Draft Constitution or against the principles which are generally accepted by the people saying that on a population basis alone this representation ought to be given. Our ideas change according to the times and our ideas should change according to the purpose for which we want to put them into practice. There was a time when this franchise was limited only to a few people, to some people in the province but as times advance, people realise that everyone should have a vote. Every person has a vote in the Circar districts. Similarly we want the same thing in the Rayalaseema districts also. It is not going against the Constitution. We want to have peace, justice and contentment and it is for that purpose that I am saying that it is not going against the spirit of the Constitution nor is it going to be in any way a retrograde step."

MR. PRESIDENT :—" I must state for the information of the hon. Member that I want to observe Rule 64 which says, ' that no member except a member of Government shall speak for more than thirty minutes,' because there are a number of amendments given notice of by several hon. Members and they wish to speak. I would like to stick to that rule and I therefore like the hon. Member to finish his speech as quickly as possible."

* SRI N. RANGA REDDI :—" It is more than sufficient, Sir."

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MR. PRESIDENT :—" I should be glad if you do not exceed it."

*SRI N. RANGA REDDI :—" Sir, provisions similar to those which have been inserted for the welfare of the tribal areas for their benefit may be inserted and a Commission may be appointed once in five years for finding out whether sufficient funds have been provided for, and whether facilities that ought to have been provided have been provided for. Some such provision ought to be made also with regard to these backward areas. Otherwise, I submit, it will not be possible for the people living in backward areas to come up to the level of the people living in the more advanced areas. First of all, priority should be given for starting educational institutions and irrigational projects and for improving the economic condition of those people living in the backward areas. Otherwise, people who had a start in life as it were, by having colleges in their places and other economic benefits, will always be going forward whereas the people living in the backward areas will suffer the disadvantages. Therefore, I submit, that in case this new Constitution provides for new provinces to come into existence, the backward areas should have some sort of weightage so that they might compete favourably with those people living in the advanced areas. What I say is not my personal opinion. It is a resolution which has been passed by the people of Rayalaseema at a conference which has been called for that specific purpose in Nandyal and they have also directed me to submit to this House that in case these safeguards are not accepted, they are not willing for the formation of an Andhra province."

* SRI B. BHIMA RAO :—" Mr. President, Sir, I second the amendment moved by Mr. Ranga Reddi."

MR. PRESIDENT :—" This is a resolution and not an amendment."

* SRI B. BHIMA RAO :—" Sir, this is connected with Articles 31 and 301 though it is not worded like an amendment."

MR. PRESIDENT :—" Whatever it is, you can go on."

* SRI B. BHIMA RAO :—" Sir, in lending my support to this, I want to say a few words regarding this subject. I was one of those who moved for the formation of an Andhra province at the Second Andhra Conference held at Bezwada, now called Vijaiwada, in April 1914 so that my Andhra friends may not suspect my loyalty to that resolution. I say, I still stand by it and subsequently about ten years ago, that is before the formation of the first Congress Ministry, we entered into a pact in Mylapore called the Sri Bagh Pact, whereunder the representatives of coastal districts of Andhradesa conceded parity to the districts of Rayalaseema. But when the matter came to actual practice, it was found that not even one representative from the districts of Rayalaseema was taken into the Ministry and not even one Parliamentary Secretary. Then, Sir, in the next year 1938 when

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the Andhra Provincial Conference was held in my district at Tungabhadra, and it was initiated by the late Mr. Raman Menon who was then the Minister for Courts and Prisons, the subject of the Sri Bagh Pact came up for formal ratification. Because it had not been accepted in practice by the Ministry, that subject was brought up and there I moved it on behalf of the Rayalaseema districts and Desabhaktha Konda Venkatappayya Pantulu supported it on behalf of the Coastal Districts of Andhradesa and it was accepted by the entire Andhra conference without a single dissident. This was in May, 1938. Well, afterwards in 1939 the Congress Ministry resigned and it was in 1946 when the Constitution was again revived and when the Ministry was formed. I went to the then elected leader, Mr. Prakasam, and brought to his notice the question of the Sri Bagh Pact and represented that at least two members from the Rayalaseema districts should be taken into the Ministry. But even then, it was only one that was taken and even afterwards when the next Ministry also came up, there was only one Minister. Sir, some of my brother members would have been disgusted with me when I put supplementary questions asking for lists after lists of Rayalaseema people who have been appointed in these two years to the higher ranks like Municipal Commissioners, District Panchayat Officers and so forth, only to be told that there was no one from the Rayalaseema district in the list. It is really a sad commentary how in the theory, this Pact is accepted but in practice, it is reduced to nothing and I think my friend Mr. Ranga Reddi has brought forth his grievances in the form of this resolution. I think, Sir, in fairness the representatives from the Circar districts of the Andhradesa must respect that Sri Bagh Pact and must give parity or something like parity to the districts of Rayalaseema. As my friend pointed out, there was a conference held recently at Nandyal under the Presidentship of Mr. Sanieevi Reddi, M.L.A. of Anantapur. There, they appointed a committee to negotiate with the representatives of the Andhradesa and arrive at some concrete details but that does not seem to have fructified. Hence, it is all the more necessary in order that these districts which are styled Rayalaseema districts, might have justice and fairplay in the matter of administration that there must be some kind of principle to be observed as enunciated by my friend Mr. Ranga Reddi. Sir, with these few words, I lend my support."

MR. PRESIDENT:—"What is the idea of Mr. Ranga Reddi? Does he want this to be put to vote or will he be satisfied with the discussions being sent to the Constituent Assembly."

SRI N. RANGA REDDI:—"Sir, I only submit that the speeches may be transmitted to the President of the Constituent Assembly for such action as he deems fit." (At this stage Sri A. Govindacharyulu stood up in his seat.)

MR. PRESIDENT:—"Are you going to speak on your amendment?"

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SRI A. GOVINDACHARYULU :—“ Mr. President, I gave notice of an amendment to raise the question of the Andhra Province. But unfortunately, my hon. Friend Mr. Ranga Reddi has dragged that question and he has made certain remarks in that connexion. I have to say a few words on that point. 11-30 a.m.

“ I wish to make it plain to my friend that I was the mover of the Sri Bagh Pact resolution in the Andhra Provincial Conference and it was accepted not by a majority but by the whole Conference. While I am here and many of the other friends are still living, I do not know why my hon. Friend should have brought this question before the House while it ought to have been brought up, either before the Provincial Congress Committee or before the High Command. These bickerings and individual aims and aspirations for Ministerships or Parliamentary Secretaryships should not work against the interests, the higher interests of the nation or the province.”

MR. PRESIDENT :—“ The hon. Member wants a safeguard being provided in the Constitution itself and that is why he is bringing it now before the House.”

SRI A. GOVINDACHARYULU :—“ In the name of the backward classes”

MR. PRESIDENT :—“ The hon. Member will just understand his point properly. He is not satisfied with the Sri Bagh Pact because nobody knows about it and what it contains and that is why he wants a definite provision in the Constitution itself concerning some safeguards; what is the objection of the hon. Member to it? ”

SRI A. GOVINDACHARYULU :—“ I am not able to say Sir, whether it would be possible to provide for safeguards for a portion of a province. It can provide for a minority or for the backward areas or communities; but can it introduce a provision in the Constitution for a portion of a province to be formed later on? A lawyer like my hon. Friend knows constitutional history and theory and he will agree that this is a thing which should be discussed with the representatives of the coastal districts and things must be adjusted with them as a matter of course after we achieve the Andhra Province. It is not a secret and I myself on behalf of the representatives of the coastal districts can assure every one of my friends of the Ceded districts that everything will be done in the Ceded districts for affording them educational facilities and for starting educational institutions in those districts and whatever they want will be attended to: the Andhra Province is meant only for the uplift of backward districts and it is not for the people who have enjoyed all these days. I wish to ask my friend what it is that the Circular district people will get by asking for safeguards in the Andhra Province.”

MR. PRESIDENT :—“ I do not want the time of the House to be taken up on matters which do not really matter. What I

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want to bring home to the hon. Member is : Supposing the Constituent Assembly is willing to do it, what is the objection of the hon. Member? "

SRI A. GOVINDACHARYULU :—" I have the least objection."

MR. PRESIDENT :—" Therefore, the hon. Member may leave it there."

SRI A. GOVINDACHARYULU :—" Mr. President, I shall therefore move—

' And on such consideration, this Council is of opinion that—

- 1. In Article 11 the abolition of Hindu-caste system be included along with the abolition of untouchability, or*
- 2. In Article 19 (2) (b) the words " or to abolish Hindu-caste system " shall be added at the end.'*

Let me say, Sir, at the outset that this Constitution has more or less an all-embracing vision and it is well-written and well-worded and looks like being worded for the whole of India, including Pakistan. Unfortunately, we are divided into two Dominions and that must force us to think in a different spirit and in a different manner especially to safeguard the freedom of the Indian Union."

MR. PRESIDENT :—" When I referred to rule 64, I did not mean that every member will be permitted to take thirty minutes. I think ten minutes shall be the ordinary time and if there is anything special, I will allow more time. I hope the hon. Member will be able to finish within ten minutes."

SRI A. GOVINDACHARYULU :—" We must remember that a neighbouring Government, I mean the Pakistan Government, is based entirely upon religion and the latest speeches of the leaders of that Dominion clearly show that they want to develop their Government on a single-religion basis wherein there will be only one political party. Such a sort of Government is there in Pakistan. As our another neighbour, we have got Russia from where God Himself has been externed and it is a Godless State and in-between these two States we want to develop a secular Government. We must consolidate ourselves not so much as to safeguard the Hindu religion but to safeguard the hard-won freedom that we have got. The caste system might have been good once upon a time but to-day it has outlived its utility and therefore, I say it must be abolished so that solidarity of the nation must be brought about. By means of the abolition of untouchability, the Harijan caste is abolished and they merge in the four castes higher up and why should not we allow or bring about the unification of all castes by abolishing the caste system. When the distinction between the Harijans and others is removed, which is what untouchability means, I think the doing away with caste distinctions in the Hindu community must also follow. In the name of freedom of the country, I suggest that we should see our way to abolish altogether the caste system along with the untouchability.

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“Article 19 (2) (b) reads :

‘Nothing in this article shall affect the operation of any existing law or preclude the State from making any law for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.’ 11-45 a.m.

If the words ‘or to abolish Hindu-caste system’ are added at the end, we will not be precluded from abolishing the caste system at least later on. Otherwise a fantastic Sanatanist may argue in a court of law that a law to abolish the caste system cannot be passed as there is no specific provision for it in the Constitution. It must be provided specifically and in an unequivocal manner so that hereafter at least we may not be precluded from abolishing the caste system, which is very essential to maintain the unity and stability of Hindu religion.”

DR. SYED TAJUDDIN SAHIB :—“I second the amendment.”

* SRI B. BHIMA RAO :—“Sir, I oppose the amendment. I never thought that my hon. Friend Mr. Govindacharyulu will bring in an amendment like this to the Draft Constitution.”

MR. PRESIDENT :—“I shall allow all the amendments to be moved and seconded and the whole thing can be discussed. Let each member move all the amendments that stand in his or her name.”

SRI A. GOVINDACHARYULU :—“Sir, I move—

‘Article 23 (3) may be omitted.’

Article 23 (3) reads :

‘(a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.

(b) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion, community or language.’

I want that this article should be omitted for two reasons. Firstly, I am not in favour of giving a finality to the Constitution until and unless we know definitely the Constitution of Pakistan. Secondly, when we want to build up a secular State, why should we define every positive and negative right? Certainly every subject is entitled to have his own religion and religious and educational institutions. Why should we specifically mention such rights and include them under fundamental rights? I want Prohibition to be included in fundamental rights under Article 13. I want that no person should be allowed to drink alcoholic liquors.”

MR. PRESIDENT :—“That cannot be a fundamental right.”

SRI B. NARAYANASWAMI NAYUDU :—“There is an article in the Constitution of the United States of America which runs as follows :—

‘After one year from the ratification of this article, the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from, the United States and all territory subject to the jurisdiction thereof, for beverage purposes is hereby prohibited.’”

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MR. PRESIDENT :—" You cannot make a fundamental right saying that nobody shall drink. You can say that, if a person drinks, he shall be punished.

" I think the hon. Member need not press the matter, because Prohibition has been the policy of the Government."

SRI A. GOVINDACHARYULU :—" Sir, this is not a new thing. I may remind the House that in the All-India National Convention held in Calcutta in 1929, which adopted the Nehru Constitution, I moved that every Provincial Government should adopt Prohibition the moment they got power. The whole convention accepted and included it as an article in the Nehru Constitution."

MR. PRESIDENT :—" My objection is to including it as a fundamental right. If the hon. Member wants to include it as a separate article, I have no objection."

SRI A. GOVINDACHARYULU :—" I have no objection whether it is included in the fundamental rights or as a separate article. All that I want is that hereafter every Provincial Government should adopt Prohibition and should not give it up on financial or any other ground. After all, there will be so many provinces under the Central Government and we cannot expect all Provincial Governments to think and act alike. A successor Government may say that to augment their financial resources, drink might be reintroduced. We should not allow scope for the successor Government to do any such thing. Since we fought for the freedom of the country on the basis of Prohibition, I say that an article should be included in the Constitution to the effect that every Government should adopt the policy of Prohibition at any cost.

" Then, I move that—

' Article 14 be amended so that capital punishment may be abolished for offences other than any offence against the State.'

I want the abolition of the capital punishment except for offences against the State to be included as a fundamental right. This also is not a new thing. I moved a resolution in the All-India National Convention, to which I have already referred, recommending the abolition of capital punishment. Dr. Annie Besant and Pandit Motilal Nehru voted against it. The rest of the convention voted for and included it in the Nehru Constitution. We recently came to know that the British Government also had suspended the award of capital punishment for five years. Almost all the nations on the Continent abolished capital punishment in pre-war years. In the name of humanity, I appeal that capital punishment should be abolished, and sufficient time allowed to those people who commit offences of a grave nature to repent and reform themselves."

MR. PRESIDENT :—" An article appeared in the Press wherein it was said that if a person, who committed a murder and

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was put in jail, murdered some one of his co-prisoners in the jail what is to happen. The jail authorities were perturbed over that. How is he to be punished? If the amendment is accepted, he can go on committing murders with impunity."

SRI A. GOVINDACHARYULU :—“ You and I have known many criminals in jail. We can devise some safeguard for cases where a criminal becomes a habitual offender. But for small offences, capital punishment should not be awarded. When we cannot create a new life, why should we put an end to a human life? God alone can create or kill. Many thinkers and writers have written volumes of books on this matter.

“ Article 131 provides for the election of Governor. I want that the Governors of the Provinces should be nominated by the President. I request my friends opposite to realize what it means if the Governor is to be elected. We all know what election means. The would-be Governor should not be placed under any obligation to party cliques and party leaders to get himself elected. The alternative of the panel system also is not good. To get himself included in the panel, the would-be Governor has to canvass for votes and dance to the tune of party cliques and party leaders. The Governor is not merely a constitutional Governor. The Union President as well as the Governors have certain special responsibilities similar to those in the Government of India Act, 1935. No person who becomes a Governor with the support of party cliques can rule the State impartially and use his individual judgment properly. A Governor should be one who can act most independently and judiciously, irrespective of party cliques. Therefore both the election system as well as the panel system must be given up. The President on the advice of his Ministers should nominate the Governors.

“ Sir, my next amendment is to include the Andhra Province in the list of States. Much has already been said on this and I need hardly say anything more. We were told that an announcement or a proclamation would be issued by the President of the Constituent Assembly for the appointment of a Boundary Commission. But we have not seen anything in the press so far. The time has now come to appoint a Boundary Commission. All that I want to say is that as far as the formation of the Andhra Province is concerned, neither my Tamil friends nor my Andhra friends need abuse each other. There is no need to say that blood will flow in the streets of Madras Presidency or the Madras City.”

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noon.

MR. PRESIDENT :—“ There is provision in the Draft Report itself for the appointment of a Commission which will report to the Constituent Assembly as regards any new province to be included in the first schedule.

“ I suppose all these amendments of Sri Govindacharyulu are seconded by Dr. Tajuddin. I would like to know whether any of the hon. Members who have given notice of amendments propose to press them to vote.”

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SRI A. GOVINDACHARYULU :—" No, so far as I am concerned."

SRI B. NARAYANASWAMI NAYUDU :—" As far as I am concerned, if the House so decides and gives me the privilege of moving the amendments, I propose to move and press the amendments to vote."

MR. PRESIDENT :—" If the hon. Members are pressing any amendments to vote, I would like them to be dealt with separately, so that there may be discussion and voting; and the others, after discussion, may be included in the list to be forwarded."

SRI B. NARAYANASWAMI NAYUDU :—" So far as my amendments are concerned, I propose to press all of them to vote. 1 and 2, 3, 7 and 15, 4 and 5, 13 and 14 will go together; and 6, 10, 11 and 12 will go individually."

* MRS. MONA HENSMAN :—" For my amendment, I want a discussion, a very earnest discussion."

SRI B. BHIMA RAO :—" I do not want any vote to be taken on my amendments, but I want serious discussion."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I wish to press for vote, my amendments relating to Article 15, Article 93 (2), and then Article 99 (1). The rest I shall move and there will be discussion."

* MRS. MONA HENSMAN :—" Sir, I beg to move—

'Add the following at the end :—

"and on such consideration this Council is of opinion that the following amendments be made in the Draft Constitution :—

'In Article 5, explanation (ii), line 6 for the words "for at least one month", the words "for at least five years" be substituted'."

" Mr. President, Sir, I have broken my own record . . . I thought that in this House, I would never put a question or move any amendment in my name. As is the case with women, I have always found it better to remark on what men have brought in, rather than come out into the open with what I believe myself. I have always found in this House such courtesy and consideration shown that I have had no need to bring forward any resolution in my name. But, Sir, to me, to-day, this question of citizenship on page 4 of the Constitution, sub-clause (2) of Article 5 seems to demand a bold and lengthy discussion."

MR. PRESIDENT :—" I would like to know the sense of the House. Would the House like to finish the discussion to-day or tomorrow also? "

SRI B. NARAYANASWAMI NAYUDU :—" To my mind, the questions are of such far-reaching importance as to necessitate a discussion for to-morrow also."

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* MRS. MONA HENSMAN :—“ And it seems to me that every one of the amendments brought forward by the other hon. Members who are going to speak with great wisdom and at great length depends on citizenship, and something must be said on this point so that the House may know what the women of the country feel. Although the best brains of the country, both men and women, have been sent to the Constituent Assembly to frame this Constitution, yet, I think they must have been in a very generous mood when they passed this clause on citizenship permitting one month's domicile. I do not know whether the Article was adopted unnoticed when the Assembly was fatigued and arguments were at a standstill, or after a hectic discussion, when nothing more could be said. All the privileges of the Advocates-General, the Administrators-General, and Presidents of Legislatures depend on how citizenship is viewed. Although the members of the Constituent Assembly would perhaps be much better fitted to train boys and girls of this generation and the next than any of us, it happens that Heaven has given it to women to be in charge of training the citizens of India in their early years. And in this honourable House, I would ask the members to recollect who were the people who formed their ideas of citizenship at home and at school. I do not want to adopt a dog-in-the-manger policy nor do I feel we should quarrel, like dogs, over old bones, but we know well, that in the matter of obtaining passports for instance, it takes the best part of a month, if not more than a month, to get all credentials through the red-tape that does exist in different countries. Citizenship is a possession we are proud of. It means much to us and will mean more in the future, i.e., rights of possession, profession, equality and justice. And in order to confer rights of citizenship on any person from abroad, the proviso that his domicile should be just one month is demeaning to our nation and residence for one month in any place seems to have been put in just to allow tourists and migrants, foreigners and aliens to have the same rights as the Indian, born and bred on the traditions of Free India. Surely, after August 15th, this is a contradiction in terms. I count this clause as a sign of mental aberration in the Constituent Assembly Members, and only thus can excuse for putting this fundamental doctrine in the draft. I do not want citizenship on a five-year basis to be included in the fundamental rights. Nor do I want this matter to be pressed to a vote, because I feel that that is not the best or the right way to bring about a reconsideration of the subject. But I consider that since sub-clause (2) on page 4 of the Constitution gives our Constituent Assembly and our Constitution of the future an opportunity not only to regulate but to expand the rights of citizenship, this matter will come under their consideration when the final Constitution has been set up. Now, Sir, I say five years, not because I want to bargain or be arbitrary as to time. In the East, we are supposed to ask for more than what we want, so that we may get what we may expect. Everybody in the commercial sphere tries to put up the price higher, so that he may at least get what is fair. But my idea of the five years is not that. The Constituent Assembly Members have provided in our Constitution that the

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President shall hold office for five years. Moreover, five years of study in a College in India makes a scholar from a State in India eligible for a Government of India scholarship. Since a period of five years entitles a citizen to eligibility for Government privileges, 'five years' is good enough for me, and gives sufficient time to reconsider whether a person, man or woman, will be worthy of citizenship, will be loyal to our Commonwealth and will take a proper interest in the country of his or her adoption. I feel, Sir, that once a person is admitted to the rights of citizenship we do not wish to question him any further. We take it for granted, as we do on both sides of this House, that when people seek to serve the country, they are willing to admit their faults, if any, and are willing to put forward all their energy and devotion into the claims which they have to make. At this time, we have no idea of a defeatist policy. The Government in power is made up of men who have sacrificed and stood by their political convictions as men in no other country have done. You, Sir, have always guarded the interests of the members on both sides of this House. With the friendship that exists between ourselves across this table, I think the members on both sides of this House feel that you are watching all our interests. It is not because I think that this matter will be shelved that I do not wish to press it to vote. It is only because I want it to be put on record that five years is a reasonable time for investigating claims for citizenship—that, instead of one month, five years' domicile makes for the justice, liberty, equality and fraternity—the four things that our Constitution stands for, and the Atlantic Charter of this hemisphere. We have provided in the Constitution, that every person, whether he be an industrialist or an educationalist, of whatever political calling or language, is a fit person to hold the office of the President, because our Presidents are elected from among citizens, our Legislatures are elected from among citizens, all our posts here in the Provincial, and there in the Central Legislatures are only meant for our citizens.

"I would like to mention another point, Sir. The women of this country very much appreciate the fact that they are to be treated on an equality with men on several counts. Article 9 on pages 13 and 15 provide that women have a perfectly equal and free position with men in the future, and may not be exploited. And at this point also, the question of domicile comes in.

"It is mentioned on page 7 that all citizens shall have the right to 'freedom of speech and expression; to assemble peaceably and without arms; to form associations or unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; to acquire, hold and dispose of property; to practise any profession, or to carry on any occupation, trade or business.' But a person who has been here a month or six months as a tourist, or who has been here for three months or ten months may easily claim any of these things on the ground that he is given these rights on page 7 of the Draft Constitution. I would request the attention of hon. Members to the pages between 5 and 15; and I would draw their special attention to pages 13 and 15, where women are given

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an equal status with men. But this status is lowered if all can share it, for there will not be work enough to go round. It will be remembered, that in 1938-39 before the last war began, a certain profession in Bombay suddenly found itself flooded by numbers of the same profession from abroad, and our livelihood was gone, simply because we had no idea of the evil effects of expanding the rights of citizenship and many suffered not only there but elsewhere in India. And it is possible in the future if we wish to keep out of war, because we have no ideas of conquest or of taking from others what is not ours, it may be, I say, that other people may decide to come into our country and take from us some of the things which we may not wish to give. What right have they if they come in for one month to claim citizenship? Nothing except the stringent test of five years will keep us free from the machinations of others. Settlers may turn out to be spies, foreign money will circulate, and our so-called citizens will become our earnest enemies—all through this slip, this fault, this deadly clause in our own Constitution.

“ Then, Sir, according to the principle of equal pay for equal work, there should not be any exploitation of one individual by another. This is one of the State policies enunciated in this Constitution. It is said here that we are going to have proper nutrition for all our citizens including our children; we are also going to have free primary education for our children, until they complete the age of fourteen years. That, Sir, by the way, seems to be a tall order and I do not know how it will be possible to give effect to this policy under our present financial conditions. In Ceylon which is next to our borders, where compulsory primary education has been introduced, the Government are finding it almost impossible to meet the demands of their subjects in this regard. It is perhaps right that we should aim at free primary education for our citizens, but then we must be very careful to determine who are our citizens and who are not. Then the State has also the obligation to protect every monument or place or object of historical interest and also to promote international peace and security.

“ Sir, it is not my wish to make a long speech on this subject. I feel that a few words will suffice, because everything stated here is so clear and so logical and all these articles have been drafted by very eminent lawyers and constitutional experts. Sir, I am not a lawyer, but I believe there is no precedent in any country for granting citizenship on a month's domicile and I think no person should be given the right of citizenship merely because he has resided for a month in this country before the date of his declaration. I feel that the practice obtaining in other countries will furnish a very good analogy in this respect. We have got to make our way as a nation and take care to avoid mistakes. It is no good being diplomatic or seeming genuine, and allowing anybody and everybody to have the same rights of citizenship, because we feel that we are a new nation, that we are free, that we are independent and wish all people well. We have to safeguard our security.

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and security means the welfare of all the citizens of this country, including our women and children of the future. Sir, I feel with the other hon. Gentleman who has spoken on this subject, that the authors of this Draft Constitution should once again meet to consider this aspect of the matter and make some provision whereby they could fix the domicile qualification for citizenship at a reasonably long period, say, three if not the five years, that I have suggested,—although I maintain that anyone would consider this to be a very reasonable period indeed under the present circumstances. Otherwise every person who wants to exploit, every person who wants to act as a spy in this country, and every person who simply wishes to wander through this country just for the sake of pleasure can claim the right of citizenship, and can have free and easy access throughout the country and can claim all those rights which people who have lived in and sacrificed for this country, enjoy; and I feel, Sir, that we are going to be called upon to make many more sacrifices hereafter in order to safeguard and secure the interests of our people. So let us not add to the confusion that will arise from this hastily worded clause. India is not seeking to include the world for she has her own population problem already.

“Then, Sir, Article 40 which states that ‘The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments and by the maintenance of justice and respect for treaty obligations in the dealings of organized people with one another’ shows that the people must fully understand what citizenship means. That being so, I cannot understand how such citizenship rights could be extended to anybody and everybody, merely because a person has resided in this country for one month prior to the date he has declared his desire to become a citizen of this country. If we really understand the duties which citizenship involves, and if we want to promote international peace and international security and international progress, and at the same time maintain the internal security of this country and safeguard the interests of the women and children of to-morrow, I do not know how can that be achieved if this kind of clause still exists in our Constitution. I, therefore, put forward my amendment for the earnest and serious consideration of this House.”

SRI B. NARAYANASWAMI NAYUDU :—“I second the amendment, Sir.”

* SRI B. BHIMA RAO :—“Mr. President, Sir, I move—
‘Add the following at the end :—

“And on such consideration this Council is of opinion that the following amendments be made to the Draft Constitution of India :—

‘I. (a) Add “Notwithstanding the provisions contained in Article 19 (2)” at the beginning of Article 20.

(b) Add “relating to trusts” at the end of Article 20.

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II. In Article 193 (1), add " and the judges of the High Court concerned and the Judicial Committee constituted by the President consisting of eminent jurists representing the various States of the Indian Union " after the words " the Governor of the State ", occurring in the fourth line and delete expressions " and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State ", occurring in fourth, fifth, sixth and seventh lines.

III. Omit Article 220 (1) and renumber the existing Article 220 (2) as Article 220.

In the Article 220 so renumbered, add " specified in Parts I and II of the first schedule " after the word " State " occurring at the end of third line and delete the expressions " for the time being specified in Part II of the First Schedule " . . "

" Sir, on the last occasion when I spoke, I explained the object of my first amendment, but I have now to mention it again to make it clearer. My first amendment is, to add the words " Notwithstanding the provisions contained in Article 19 (2) " at the beginning of Article 20 and to add the expression " relating to trusts " at the end of Article 20. The reasons for bringing forward these amendments are as follows: After my speech on the last occasion certain critics of the Constitution have written in the press and have also communicated to me their views that the provisions in article 20 are quite illusory and are rendered powerless and nugatory by the provisions contained in Article 19 (2) of the Draft Constitution. Article 19 (2) reads as follows:—

" Nothing in this Article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice."

This is quite distinct and different from the right to maintain, or manage, or own or acquire property or to administer property relating to religious institutions and I do not think, Sir, that the provisions of Article 20 could be said to be overridden by the provisions of Article 19 (2). Anyhow for the sake of caution, I have sought to amend Article 20 by adding certain words which I have mentioned above. I do not want to go into the amendments in detail. Some are concerned with mutts and I do not think that the Harijan community want to enter into these mutts. The heads of these mutts are rather apprehensive that because Harijans have been given the right of entry into temples and other religious institutions, they might perhaps invade the premises of the mutts also. I do not think my hon. Friend opposite, Mr. Jagannatham, will say that that is their object or that all Harijans want to have their equality established in temples and in mutts also. I do not think that our Harijan friends want that everything that was done in Bombay should be attempted here also. I know that in

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the case of the famous temple of Veeranarayana at Gadag which was recently thrown open to Harijans, certain Harijans wanted to enter the *Sanctum Sanctorum*, where even Hindus are not allowed to enter. All people are allowed to worship the God only from a certain distance and attend to the pujas. It is only the archakas who have, according to some ancient custom and usage, been entitled to enter the *Sanctum Sanctorum* of that temple and conduct pujas. These Harijans made their way into it by force and there was a suit in the Court of the local Sub-Judge for restraining them and the Sub-Judge held that the Harijans were entitled to only that much right as the other Hindus had got. That is why, Sir, these archakas are very apprehensive that inroads would be made into these ancient customs and privileges against which they want to be safeguarded. Hence, Sir, I have sought to introduce these two amendments in the Draft Constitution with a view to guard against such things. These customs and privileges are more or less in the nature of rights to properties and they must be governed by the law of transfer of property. Even with regard to properties belonging to churches, they are all governed and codified by the law of transfer and the same thing must apply here also. The effect of these two amendments is that there should not be any undue interference with the religious affairs of these mutts and other religious properties. Otherwise, Article 20 of the Constitution has been kept intact.

"Then, Sir, with regard to my other amendment to Article 193 (1), I have already spoken on it on the last occasion. With regard to the constitution of the High Court, I have proposed to omit Article 220 (1) of the Constitution. It states, 'The Legislature of a State for the time being specified in Part I of the First Schedule has the exclusive power to make laws with respect to the constitution and organization of any High Court having its principal seat within such State.'

"Sub-section (2) of the Article lays down that 'Parliament has power to make laws with respect to the constitution and organization of any High Court having its principal seat in a State for the time being specified in Part II of the First Schedule.' My object is that Parliament should have the power to legislate with regard to the constitution and organization of both the States which are mentioned in Parts I and II of the Schedule and it should not be left to the local legislature to pass such legislation. My hon. Friend, Mr. B. Narayanaswami Nayudu, has given an amendment in the opposite direction. He wants that power should be given to the local legislature. I am only talking about the principle involved and I should like to say that there are so many provincial and party considerations which would come into play, if the appointment of High Court Judges is left to the Provincial Legislature. The administration of justice is one branch which has stood the test of so many influences which arose after the war. That is the one department which has kept itself pure and free from the baneful influence of the Provincial party politics and hence I submit that with regard to the appointment of High Court Judges

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there should not be any other consideration except that of merit and efficiency. It is my firm conviction that it must be within the Province of the Parliament to pass legislation with regard to the constitution and organization of the High Court and also with regard to the appointments which are mentioned in Article 193. I suggest that the appointment of the High Court Judges should be made by the President in consultation with, not merely the Chief Justice of the Province concerned, but also with all other Judges. I think, Sir, that was the practice in Madras till about ten years ago. I do not know why it has been given up. There are no adequate reasons for changing that convention and in my opinion it would be better if all the Judges are consulted, because the combined opinion of ten or fifteen Judges will have greater weight than the opinion of the Chief Justice only. The next point is that there is no necessity to consult the Chief Minister of the State, because the appointment of these High Court Judges should be above politics and that was the practice before 1946 at any rate. I remember very well that during the last Congress Ministry, the appointment of High Court Judges was made without the then Premier knowing anything about it. It was the Governor and the Chief Justice and some other Judges that were taken into confidence and the appointments made, and the Ministry was not consulted in the matter. I think it is a correct principle, as otherwise all sorts of political considerations and party affiliations will come into play and that should not be the criterion for making appointments to these august bodies like the High Court Bench. I thought, Sir, you said that with regard to the other amendments also which were moved by some of my Friends, I might speak. I shall speak, Sir, on only one or two points. I do not like to speak again and take the time of the House. I want to speak with regard to the question of the formation of the Andhra Province brought forward by my hon. Friend Mr. Govindacharyulu. As I have already said, Sir, we are all in favour of the separation of the Andhra Province, the Tamilnad Province and the Kanara Province and other Provinces. In the present context of events where Kashmir and Hyderabad are looming large probably the Prime Minister of India has not been able to appoint a Boundary Commission. We are also eager and the Karnatakas also are as eager as the Andhras. It was in 1914, Sir, that I moved first for the formation of the Andhra Province and I am even now in favour of the formation of the Andhra Province and I am equally as eager for the formation of the Karnataka Province. I do not think there is any doubt about that. It is only that we should be patient for a short while and I think in a short time we will have all these Provinces. With regard to the amendment moved by Mrs. Hensman, I am quite in agreement with her in the principle of her amendment about the acquisition of citizenship. One month's time seems to be too cheap a bargain, Sir, for the acquisition of citizenship. In America it is ten years and even afterwards there are so many formal things to be done in order to acquire citizenship. I do not know if there would be a reciprocal arrangement that if we reside for one month, say in

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Ceylon or Burma, we would be able to acquire citizenship there. I have not been in touch with these subjects relating to the citizenship in Ceylon and Burma. Anyhow one month's time is really dangerous to be adopted. If an alien should come here and remain here for one month and say: 'I will be loyal to the Indian Union' and then lodge a certificate before the District Magistrate or Collector, and say that he should be granted citizenship it is rather dangerous. I think five years' time is reasonable and it ought to be supported."

MR. PRESIDENT:—"Anybody seconding the amendment?"

SRI N. VENKATACHALAMAJI:—"I second the amendment, Sir."

MR. PRESIDENT:—"I thought Mrs. Hensman would second. The hon. Member, Mr. Farookhi Sahib, may move and speak on all his amendments, which he wants to press for a vote."

ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"I think I have to move the amendments one by one, Sir, and not all of them."

MR. PRESIDENT:—"The hon. Member can move and speak on his amendments and I shall put them to the vote of the House one by one."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"Mr. President, Sir, I move—

'that Article 15 be renumbered as Article 15 (1) and the following shall be added as clause (2) of Article 15, namely:—

"(2) No person shall be detained in prison for more than 15 days without being tried, convicted and sentenced to imprisonment by a competent court of law."

I think, Sir, this is a very simple amendment. After the advent of independence it is necessary that every citizen should feel that his liberty will not be snatched away by the whims and fancies of the Party that would be in Government at that time. We have seen of late the tendency on the part of the Provincial Governments to imprison people without showing any legitimate cause and to allow them to rot in prison without giving them any hope of coming out of it. Now, Sir, what this amendment seeks to do is to see that people are not put into prison without being brought before a magistrate who can try them and who can pronounce whether they have to be kept in prison for a specified time or not. If this amendment is not passed the difficulty will be for people who want to oppose and criticise the acts of the Party that may be in Government at that time and they will not know whether they will be allowed to contest a general election or not. The Party in power may, if it so chooses to do, put any inconvenient people in prison at the time of the election and after the election is over, perhaps those people may be let out. But they may not know till what time they will be in prison. I may with

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your permission, Sir, point out here that in our own Province recently—as I said when I was speaking in this very House some time back, not before the red-letter day of the 15th of August 1947, but after that date—people have been put into prison without being brought before a magistrate for trial.”

MR. PRESIDENT :—“ But how does your amendment prevent that kind of thing being done? Even ten days before the election all the people may be put in prison and let out after the election is over.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ If this amendment is accepted, it is possible that in the Constituent Assembly, where there are wiser people than myself, will point out this difficulty and say, it should not be fifteen days but only a week, and that people should not be detained for more than a week. They may say so. (Interruption.) They may find it out, Sir, and say that these people should not be put in prison without trial and conviction.”

MR. PRESIDENT :—“ I think you ought to put it on fundamental rights and not in connexion with the question of elections.”

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ Even as a fundamental right it is very important. I said, Sir, that even at the time of the general elections people can be put in prison under such excuses. As far as I know, Sir, the Government can put a man in prison without being brought to trial before a competent court. I was referring, Sir, to the state of affairs in our Province. I am not concerned with parties. I say that there are still people who are rotting in jails without knowing when they are going to be released, and without knowing for what reasons they have been put in prison. I appeal to the Hon. the Premier, Sir, in this connexion to see that if they are really guilty, let them suffer, not for one year but for ten years or let them even be given capital punishment, if they are guilty . . . (Interruption.) My hon. Friend may not agree with me. But I say, if there is some slight excuse, do punish them and do give them deterrent punishment. But how is it that this Government have not found out whether there is a legitimate case for keeping these people in prison or not.

“ We know that there are still in prison people who belonged to the R.S.S. and the Muslim National Guards, though these bodies have gone out of existence, and the people belonging to Kaksars, although the Kaksar Movement has long been dead and the Chief of the Kaksar Movement, Allah Mushrique, has said that he has disbanded the organization. I do not know how they have been brought under some law or some excuse and put in prison. The poor people are suffering there in prison. Therefore, I say if a man is to be put in prison by the order of the Executive Authority of the Government, according to their whims and fancies, let him be tried by a competent court of law and then only he can be kept there. I am thankful to you, Sir, for pointing out that

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this is more important as a fundamental right, because elections may come and go and elections may be there or may not be there. The liberty of the man is always there and it ought to be protected. In this connexion I have to point out that the All-India Congress Committee has always advocated that this fundamental right of the liberty of a person should always be protected. (Interruption.) Well, Sir, under the excuse of duty anything can be done and I think my hon. Friend, Mr. Govindacharyulu, will agree with me when I say that the British Government could have said at that time that they were doing everything under a sense of duty. In fact they said that it was the duty of the citizens to be law-abiding and because we were not law-abiding we were put in prison and we protested against that. We said that the British Government deprived the people of their liberty and Mr. Govindacharyulu was one of them. He did not say at that time that it was dereliction of duty on his part that was responsible for their putting him in prison. He protested that the British Government was wrong in putting people in prison. I think, Sir, now I am right in saying that people should not be put in prison and that he is wrong." (Interruption.)

MR. PRESIDENT:—"Please don't care for interruptions."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"I will be able to answer them, Sir."

"The Congress organization as such, the whole of the All-India Congress Committee, and the Congress Party that came into power and the Swaraj Party that represented the Congress in the Central Assembly and the Provincial Legislative Councils and all the members of the Congress including all the Ministers who to-day are in the Treasury benches, all at that time fought for the liberty of individuals and I think it will be in keeping with this principle of the liberty of the individual that they should support this amendment. I think, Sir, that an amendment of this sort is necessary, because to-day this Government will be here, the Congress Party may be here, but to-morrow some other party may come, the Communists may come or the Socialists may come, and whoever comes, if there is a safeguard in the Constitution that the individual liberty of a person should not be snatched away from him according to the whims and fancies of the party in power, I think it will go a great way to assure people and infuse confidence in their minds that India is having real independence. Therefore, I move this amendment, Sir."

MR. PRESIDENT:—"The hon. Member can speak on the rest of the amendments also and I will put them one by one to vote."

ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"Sir, my hon. Friends here feel that the amendments can be put to vote one after another."

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SRI B. NARAYANASWAMI NAYUDU :—“ The matter will be fresh in the minds of hon. Members if amendments are put to vote one by one instead of putting them all at the end.”

MR. PRESIDENT :—“ He has got only four amendments to move. Let him speak on the amendments first, and then I will put them to vote one by one.”

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ The next amendment that I wish to move, Sir, is—

‘ In Article 67 (1) delete the words “ of whom ”, sub-clauses (a) and (b) and the proviso.

Delete sub-clause (2) of Article 67.

In Article 67 (3) (a) for the words “ by the elected members of the Lower House ” substitute “ by the members of both the Houses.”

In Article 67 (3) (b) delete the word “ elected ” occurring before the word “ members ”.

“ Sir, Article 67 (1) says :

“ The Council of state shall consist of two hundred and fifty members of whom—

(a) fifteen members shall be nominated by the President in the manner provided in clause (2) of this Article.”

Sir, I do not want that the President should have the power to nominate, because we have had very bad experience of nominations. We had to refer often and often to the bureaucratic manner in which nominations were made by the ex-British Government of India. Nominations were made then to strengthen the party in power. Now if the President is allowed to nominate 15 members, it is only going to add to the strength of the party in power. Therefore, I feel, that, when we are having democracy, all members should be elected. Why should we snatch away the right of people to elect their representatives? Why should a particular power be given to a particular individual, however highly he may be placed in office? I feel that such power should not be vested in the President. Therefore, Sir, I move my amendment to this Article. The other amendments are only consequential.

“ Then, Sir, I move my amendment to Article 93. It is—

‘ In Article 93 delete clause (1).

In Article 93 (2) for the words “ so much of the said estimates as relates to other expenditure ” substitute “ all estimates that relate to expenditure.”

In this Article we again find that we are copying, to some extent, what the former British Government was doing. I feel that all the items of expenditure should be subject to the vote of the Legislature in a democratic country. There should be no provision for certain items to be exempted from being voted upon. This is an Article, the substance of which has been drafted into this Constitution from the old Government of India Act. I feel that in a

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democratic State like that of ours, powers should not be vested in anybody to do anything that he likes without the permission and without the sanction of the Legislature. Therefore, it is, Sir, I move my amendment to Article 93.

"Then, Sir, I come to Article 99."

MR. PRESIDENT:—"Your amendment is to substitute 'Hindustani' for 'Hindi'."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"Yes, Sir. It is a subject in which you are interested. My amendment is—

'In Article 99 (1) for the words "Hindi" substitute "Hindustani" written either in Nagari or Urdu script.'

Sir, the revered leader of India, Pandit Jawaharlal Nehru, has said . . .

MR. PRESIDENT:—"It is only different in name, not much in substance. It depends upon the person who speaks."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"A doubt has been created in the minds of the people that this is cautiously worded. Some people feel that in order to avoid . . ."

MR. PRESIDENT:—"What do you think is the language which Pandit Jawaharlal Nehru speaks?"

* ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"My own opinion is that he speaks chaste Urdu. Urdu is spoken in Madras, in Central Provinces and in Bombay. Urdu spoken in Central Provinces is different from Urdu spoken elsewhere."

MR. PRESIDENT:—"That is why I say that it all depends upon the persons who speak. Hindi consists more of Sanskrit words and Hindustani consists more of Persian words."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"In answering a question on India's national language at a reception given to him by journalists in Bombay on April 1926, Pandit Jawaharlal Nehru said:

'It was obvious that Mahatma Gandhi wished that Hindustani should be India's National language in both Nagari and Urdu scripts.'

Sir, it was the wish of the Father of Indian Independence, Mahatma Gandhi, that the national language or the *lingua franca* of India should be Hindustani written both in Nagari and Urdu scripts. I am aware that the eminent draftsmen of this Constitution were not unaware of the wish of Mahatma Gandhi with regard to this subject. Such being the case, it is difficult to understand why that word 'Hindustani' has been scrupulously and carefully avoided and why the question of script has not been decided. It is said that in Parliament business shall be transacted in Hindi or English. Therefore, Sir, some people feel that this smacks of a sort of communal prejudice that the draftsmen of this Constitution do not want that even the word 'Hindustani' should be there.

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and that they do not want that the question of script should be mentioned. Sir, if we are to satisfy the wishes of our great Leader and Founder of the Independence of our country, and if we are to abide by the desire of the great Prime Minister of India Pandit Jawaharlal Nehru, it is necessary—his speech in Bombay has been printed in bold types by the Press—that the national language of India should be not Hindi, but Hindustani written both in Nagari and Urdu Scripts."

SRI B. NARAYANASWAMI NAYUDU :— I second the amendments, Sir. I just wish to say a few words about Article 15. It says :

"No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India."

This is one of the fundamental rights mentioned in the Constitution. It is one of the main planks in any Constitution, namely, freedom of life and personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law. That is, if you want to take away his liberty, or you want to convict him, he must be arraigned in a Court of law and the usual procedure should be followed. He must be convicted and then only his liberty can be taken away. That is the principle and fundamental right in any Constitution for a Democratic State. You have got a right to say what you please. You have got a right to lecture on what you believe right provided, of course, you do not infringe the provisions of the law or you do not slander anybody. When you slander any person or violate the provisions of law, then you are liable to criminal prosecution or to civil action. That is why, it is said—

No person shall be deprived of his or personal liberty

In item 3 in List I—Union List of the Seventh Schedule, it is said 'Preventive detention in the territory of India for reasons connected with defence, external affairs or the security of India'. Similarly, in the State List also the same thing is mentioned. All that I am now concerned is to appeal to Government to say whether preventive detention, which has been going on in this Presidency under the Public Safety Act, will not be abused and could not be abused. This right is mentioned in Article 15 only for the purpose of the security of India and not for any suppression of political parties. I appeal to Government, when the next elections are going to be held, to set at liberty the persons who have been put in prison not for security offences, but simply put in prison for the security of India or for the public order of the Presidency. I submit at least when adult franchise is introduced and elections are held, these persons shall be set at liberty so that they may exercise their right to vote without any difficulty. Never mind they are Communists; never mind they are Hindu Mahasabhaites. They are not persons bound to be there. Their freedom has been taken away. You should give them freedom to

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go and exercise their right of vote at elections. I say that the purpose of the Public Safety Act, is to detract the fundamental right mentioned in Article 15.

"With regard to the other amendments, I do not propose to say anything. I heartily support the amendments."

MR. PRESIDENT :—"The Amendments are before the House for discussion."

1 p.m. SRI S. B. ADITYAN :—"Mr. President, Sir, with regard to the first amendment, I wish to say a few words. Although voting with regard to the amendment is free in the sense there is no wh.p, we are bound to vote against the amendment proposed by the hon. Mr. Farookhi Sahib. While I was listening to him, I felt that I was hearing a repetition of the arguments which he advanced on the discussion of the Public Safety Act, a few months ago. These arguments were advanced by the hon. Member at that time as part of the Opposition against the Public Safety Act. In those days, as a member of the Muslim League Opposition, he opposed the passing of that Act and now he is advancing the same arguments as a member of United Democratic Party. There is practically no difference between the arguments advanced by him then and now. Sir, what is now in power is a popular Government elected by the free will of the people and representing the people as a whole. Now, if certain elements wish to disrupt and overthrow this Government by means which are highly questionable, Government must, in the name of the people, take proper measures and use the powers given to them. The hon. Mr. Farookhi Sahib mentioned about the liberty of the individual. May I ask him, is there any law ever passed by a Government which does not take away the liberty of the individual, that does not seek to restrict that liberty? Is there any law that does not in any way take the liberty at least to some extent? Every time, we are passing a law, we are placing some restriction on the liberties of the society."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—"I suppose I have got a right of reply."

MR. PRESIDENT :—"Yes."

SRI S. B. ADITYAN :—"So, Sir, let us not be carried away by theories like liberty of the individual, because, as I said, every law restricts the liberty of the individual to some extent or other. I submit to the hon. Members of this House, that we should be consistent. We voted by a majority for the passing of the Public Safety Act. We deliberately gave powers to the Government, including the power to detain individuals for a period of six months. Now, Sir, an amendment is brought before this House which runs directly contrary to what we passed the other day. It is quite true that it comes in another shape or in some other form but it is exactly opposed to what we passed some time ago, namely, that this Government should have unfettered power

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to detain persons for such a length of period as is mentioned in the Maintenance of Public Safety Act. Sir, as I said a little while ago, this is a people's Government; this is a popular Government that is in office. But certain individuals and certain persons are deliberately bent upon overthrowing the popular will of the people. They cannot be arrested under the ordinary law. They have got the knack of going underground; they have got the power to incite people. They are carrying on propaganda even in courts of law and they are prepared to do mischief with a set object and such persons are certainly a danger to safety. Under those circumstances, the Government must be armed with certain extraordinary powers. We have got an assurance from the Government that those powers will be used with moderation and only where they are necessary, and we find in practice, there is no abuse of the powers granted to them. Wherever they have to exercise that power, they have an advisory committee to advise them. Therefore, Sir, so far as I can see, this amendment is exactly the same as the amendment brought before the House to the Public Safety Act, though in another form. So, it is our duty to be consistent to ourselves and to oppose this amendment."

* SRI N. RANGA REDDI:—"Mr. President, Sir, I would like to oppose the amendment brought forward by my hon. Friend, Mr. Farookhi Sahib. The amendment seeks to concede in a way that the Government should be armed with certain powers, like the power of detention, even though a particular person is not arraigned before a court of law. But, the amendment only says that the period of detention should not be more than a fortnight. I submit, Sir, that when once you concede that the Government can be given the power of detaining persons for a fortnight—there is no sanctity in fixing the period only for a fortnight—it should be left to the Government to decide about the time limit. They are the best judges of the situation. It is no doubt true that my hon. Friends have been arguing that if power is given to Government, they are likely to misuse it. I wish to say, you may frame the best Constitution; it may be best the political document; but unless people who are asked to work that Constitution are people who are responsible and responsive to public criticism and public opinion, that Government cannot survive for a long time. Therefore, I submit, whatever may be the Constitution, the people who work the Constitution are more important than the Constitution itself. When such is the case, we need not think that the persons who are armed with this power would abuse their powers and would put people in prison without any reason.

"Then, Sir, another point which my hon. Friend, Mr. Narayanaswami Nayudu, was saying is that every person should be brought before a court of law. He referred to Article 15 which says:

"No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India."

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This, Sir, does not mean that every person convicted under the Public Safety Act, should be taken before the court. This Act has been passed by both the Houses of the Legislature and it has become a law. Under this law, there is no question of a person convicted being taken before a court of law. I submit it is not necessary that every person should be brought before a court of law. The Legislature is satisfied that the liberties of particular persons should be restrained in a particular manner and therefore both the Houses of the Legislature passed this measure and it has become law. Therefore, I submit this amendment should be opposed."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—

"Mr. President, Sir, it is a surprise to know that in spite of the fact that a free vote has been allowed by the Congress Party, there are still some members, Sir,—one of whom I know very intimately and who has also gone to jail—who are opposed to the liberty of the individual! Sir, I shall first deal with my hon. Friend, Mr. Adityan. He said that I have advanced no new arguments and that I have stated now what I said on the previous occasion with regard to the Public Safety Bill. I also said so, Sir, at the very beginning, it is not a question of a local Legislature trying to enact some law on account of some emergency. Here it is a question of our Indian Dominion, of the whole country framing a Constitution, not for to-day but for all future generations. Of course, there may be amendments now and then because no Constitution can be said to be perfect. Sir, in framing a Constitution, we must see that, as far as possible, the Constitution suits the temperament of the people. Now, Sir, my hon. Friend, Mr. Adityan said that every law restricts the liberty of the individual. I do not think there is anybody who will concede that every law restricts or limits the liberty of the individual. On the other hand, Mr. President, people feel that the law gives liberty to the individual. The law is there to give liberty to the individual and to uphold that liberty. If a man does not deserve that liberty or deserve to enjoy that liberty, it is only then that the law says, you ought not to have liberty. Therefore, do not deprive the individual of his liberty in an haphazard manner or in a dictatorial manner. The law says and the Constitutions of democratic countries say that the liberty of the individual should not be restricted. Sir, I am not a lawyer, but I know something of law. I know according to commonsense also, it is this, which the law says. It says that no man should be considered guilty—there are eminent lawyers here and they know it—unless the guilt of that man is proved in a court of law. Until the guilt is proved, he is considered innocent. If a man is innocent, how are you justified in depriving that man of his liberty? Sir, my hon. Friend, Mr. Adityan, said that there may be people who will be bent upon overthrowing this Government. I ask him in all seriousness, why did not the Government say that there are people who are bent upon overthrowing them? As a matter of fact, Sir, did we not overthrow the British Government? Do we not have that right?"

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We have that right. Any party has a right to overthrow the Government if that Government goes wrong. It should not be argued that because a party has come to overthrow the Government, it should be put in prison, and the members of that party should be detained without trial or should not be brought before a court of law. I say that it is not for this that we got independence. It is said that there are people who are trying to overthrow this Government of our Province. If you extend that argument, it will mean that we are all undesirable agitators because we have differences with the Government.

"Then, Sir, another point which Mr. Adityan raised was that even if these people were brought before the court of law, even then they could manœuvre to get out of the difficulty and do mischief again. If a court illegally helps and accused and if a magistrate or other local authority constituted under the law is going to be influenced by some agitators, I think that such a court of law has no right to exist.

"Then, Sir, I have only one word with regard to my hon. Friend, Mr. Ranga Reddi."

MR. PRESIDENT:—"The same remarks apply to him also."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR:— No, Sir. The hon. Member talked of the due process of law. For the information of the House, I will just read a few lines from Munro's Constitution of the United States. It says:

"What is "due process of law"? To determine the meaning of these four words has given the federal courts no end of trouble during the past hundred years, and even to-day they have not succeeded in making it absolutely clear. No other phrase in the Constitution has proved so elusive, but in a general way the requirement of "due process" means that there must be, in all actions to deprive a man of his life, liberty, or property, an observance of those judicial forms and usages which by general consent have become the essentials of a fair judicial proceeding."

Sir, the hon. Member Mr. Ranga Reddi said, that the detention of a person need not be under a judicial proceeding. The hon. Member said that there need not be any judicial proceedings because this amendment has conceded the right of the Government to detain a person for 15 days. Some little power is given to the Government. I do not deny that that power is necessary. But if my hon. Friend says that because this amendment allows the Government to detain a person for 15 days the man may be detained for ever, then it is not a sound argument. This 15 days' time is given to the Government to find out whether the man is guilty or not. After enquiry if he is found guilty, he may be put in prison; if he is not guilty he should be set at liberty. If that time limit is not given, no Government can carry on. But there should be a safeguard for the individual also. It is said that the Government will not misuse their power. My hon. Friend Mr. Ranga Reddi, even when he has not come into power, says that people should be put into prison like this. If we go round the Madras Penitentiary and other jails, we will see whether these

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powers have or have not been misused by the Government. We cannot have confidence that the power will not be misused. On account of the fear that the power may be abused, I say that this safeguard should be incorporated in the Constitution."

MR. PRESIDENT :—" The question is—

' Renumber *article 15 as article 15 (1) and add as clause (2) the following :—*

" No person shall be detained in prison for more than fifteen days without being tried, convicted and sentenced to imprisonment by a competent court of law."

The amendment was put and lost.

MR. PRESIDENT :—" The question is—

' *In article 61 (1), delete the words " of whom ", sub-clauses (a) and (b) and the proviso.*

Delete sub-clause (2) of article 67.

In article 67 (3) (a) for the words " by the elected members of the Lower House " substitute " by the members of both the Houses."

In article 67 (3) (b), delete the word " elected " occurring before the word " members ".

The amendment was put and lost.

MR. PRESIDENT :—" The question is—

' *In article 93, delete clause (1).*

In article 93 (2) for the words " so much of the said estimates as relates to other expenditure," substitute " all estimates that relate to expenditure ".

The amendment was put and lost.

MR. PRESIDENT :—" The question is—

' *In article 99 (1), for the word " Hindi " substitute " Hindustani written either in Nagari or Urdu script ".*

The amendment was put to the House.

MR. PRESIDENT :—" I will put it again to the vote of the House because I find the voices equal."

The amendment was again put and lost.

MR. PRESIDENT :—" I personally feel that the hon. Member ought not to have pressed to vote the amendment regarding Hindi and Hindustani, because the principle has been accepted by the Congress."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I wanted to know from the votes. Sir, how far it is lip acceptance and how far it is heart acceptance,

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“ Sir, I beg to move the following amendment :—

“ In article 45, for the words “ from the date on which he enters upon his office ” substitute the words “ and in the case of a bye-election for the remaining period of five years ” .”

“ A person may be elected as President in a vacancy caused either by death or resignation or by impeachment and conviction. Suppose a person has been President for 4 years 11 months and 29 days and there is a vacancy . . . ”

MR. PRESIDENT :—“ I think your amendment must come properly under article 51 (2) which deals with term of office of Presidents elected to fill casual vacancies.”

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ Yes, Sir, the amendment may be made to that article. There is not much to be said with regard to this. It is very clear, Sir.

“ Then, Sir, I move the following amendment :—

“ In article 47, insert as clause (3) the following :—

“ A person shall not be eligible for re-election as President or for election to any Legislature either State or Union or for holding any office or position of emolument under the Government of India or of any State or under any local or other authority subject to the control of any of the said Governments if he is impeached and convicted for violation of the Constitution ” .”

“ Sir, the man who is impeached and convicted for violation of the Constitution does not deserve to be elected to any post of responsibility. It is a non-controversial matter, Sir.

“ Then, Sir, in article 50 (3) I move that for the words ‘ the other House ’ the words ‘ the Supreme Court ’ be substituted.

“ I feel, Sir, when one House has impeached a person, as things stand at present, the other House also will consist of a majority of Members belonging to the Party which has impeached the person in the other House. So the other House will not be able to do justice. It is necessary to take a detached view of the whole thing. That can be done only in a court. The whole country has confidence in the Supreme Court and it should be given this power and not the other House of the Legislature.”

MR. PRESIDENT :—“ The question arises which is the superior body—the Legislature or the Judiciary. The right of impeachment is given to the Legislature and not to a body which is subordinate to it. A court of law is subordinate to the Legislature. But it does not mean that I am in favour of impeachment. I do not think you can ask the House to go and appear before a Court of Law.”

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* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" In the United States of America it is provided, Sir, that where there is an impeachment by the two Houses, the Chief Justice might take part."

MR. PRESIDENT :—" The Chief Justice might take part. There is no objection."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Perhaps the Hon. the Leader of the House can come to our rescue, Sir."

THE HON. DR. T. S. S. RAJAN :—" I am not a lawyer, Sir."

MR. PRESIDENT :—" I think the hon. Member need not press his amendment."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I do not press it, Sir."

MR. PRESIDENT :—" Then amendment to 50 (4) also goes."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Yes, Sir. Then I move, the following amendment :—

' In article 134 add the following as clause (3) :—

" No person shall be eligible for re-election or for reappointment as the case may be, as Governor or for election to any Legislature either State or Union or for holding any office or position of emolument under the Government of India or of any State or under any local or other authority subject to the control of any of the said Governments if he is impeached and convicted for violation of the Constitution " .

The same argument holds good in this case as was advanced in the case of the President.

" Then Sir, in article 137 (1) I move that after the words ' Legislative Assembly ' the words ' or of the Legislative Council ' may be added. In article 137 (2) (a) after the word ' Assembly ' the words ' or of the Council ' may be added. In article 137 (2) (b) after the word ' Assembly ' the words ' or of the Council ' may be added."

MR. PRESIDENT :—" You may omit 137 (3) and 137 (4) relating to the Supreme Court. The rest will stand."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Yes, Sir. Then Sir, in article 182 (4), after the word ' absence ' the words ' Chairman of the Legislative Council or in his absence ' may be inserted.

1-30 P.m. " At a joint sitting of the two Houses, the Speaker of the Assembly or in his absence, any such person as may be determined by rules of procedure made under clause (3) of this article, shall preside. In the foot-note given below, it is stated ' the Committee is of opinion that the Speaker of the Assembly shall preside at

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a joint sitting of the two Houses as the Assembly is the more numerous body.' Granting that, in the absence of the Speaker of the Assembly, why should not this privilege be given to the Chairman of the Council? I, therefore, move my amendment, namely, that in article 193 (4) after the word 'absence' *insert* the words 'the Chairman of the Legislative Council or in his absence'. I do not think there will be any controversy with regard to that.

"My amendments to articles 184 (1) and 184 (2) deal again with Hindustani.

"Then, I come to article 282 (2), namely—In article 282 (2) after the word "dismissed" *insert* the word "suspended"."

MR. PRESIDENT :—"Don't you think that suspension is only a temporary thing and sub-clause (2) of the article refers only to final punishment of officials?"

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—"Even in regard to suspension, what I feel is, there have been instances where to our very great regret and astonishment, members of the party in power have influenced and have been influencing higher authorities, to suspend subordinate officials if they do not act up to the wishes of the local satraps. Therefore, an opportunity should be given to the person who is suspended in order to maintain the integrity of the public service."

MR. PRESIDENT :—"Then, you want two enquiries to be made; one for suspension and another for final punishment."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—"There must be something like an appeal provided. Supposing a person is convicted by a magistrate and if an appeal is provided, he can bring up fresh arguments and new facts."

MR. PRESIDENT :—"Suspension is no punishment. That is not the point at issue. If the hon. Member wants to move that amendment also, I have no objection, but I am only trying to explain the fundamental purpose behind it. Suspension is made pending enquiry. This is only for a temporary period."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—"Yes, Sir, but I am concerned with what will be the effect of this on the man who is suspended. He is lowered in the estimation of the people with whom he works. There is also the natural prejudice against such a person when the case is being heard. Therefore, unless he is given an opportunity to show cause why he should not be suspended, the man will be put to great difficulty. My amendment will be helpful in such cases."

MR. PRESIDENT :—"Then there are only Mr. Narayana-swami Nayudu's amendments. I hope he will be able to finish in the afternoon."

The House then adjourned to meet again at 2-30 p.m.

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(After lunch—2-30 p.m.)

* DR. SYED TAJUDDIN SAHIB :—“ Mr. President, Sir, I wish to say only a few words with regard to one or two points. Firstly, I shall refer to the fundamental rights and protection to minorities and safeguards. India is indeed a diversified unique mosaic. It is multi-religious, multi-lingual, multi-communal and multi-national. It is composed of numerous groups with different racial, cultural, linguistic and religious affiliations. It is but right that all the minorities, irrespective of caste, creed or colour, must be assured of the fundamental rights which all nations on the face of the globe hold so dear—the right to speak their own language, to maintain their own literature, their national traditions, their customs and manners, to bring up their progeny in the ways of their ancestors, and in short, to retain their individuality.

“ The minority problem in India is more complex than it is in other countries. In India, as Mr. N. C. Roy, observed, the scope of minority protection is far wider and includes adequate representation in different branches of Government. The rights should include not only the linguistic, religious and cultural interests of the minorities but must also involve a reference to their political status.

“ Language is the sacred repository of a community's or nation's culture. All the great languages of India have, in varying degrees, rich cultural heritages, in the words of Sir R. K. Shunmukham Chetti. Fullest scope must be given to the development of all the various cultures. Even a re-distribution of the provinces on a linguistic basis is therefore necessary. All these provinces must be as fully as possible, autonomous and federated into a nation-State, though a nation-State is only a half-way house. Thus there would emerge a Bengali nation, a Punjabi nation, a Gujarati nation, a Mahratti nation, an Andhra nation, a Dravidian nation and so on. I regret to say that so far, Urdu, the vehicle of Muslim culture, has received only a severely step-motherly treatment at the hands of the majority community and of the Powers that be. Does not Urdu represent a unique synthesis of Hindu-Muslim culture? Is it not basically an Indian language? Will it not or can it not, with certain minor reforms, easily become the *Lingua Franca* of the Union or at least the common language of a large section of the people of Hindustan. Urdu has a Sanskrit and Hindu foundation with a Muslim superstructure and therefore it rightly represents a just compromise between the two time-honoured cultures. In the opinion of Sir Tej Bahadur Sapru, Urdu toned down the mutual differences and enabled the Hindus to understand the Muslims and the Muslims to understand the Hindus. He characterised the step-motherly treatment of Urdu as cutting the nose to spite the face. So, for purposes of at least the Central Legislature and for the proceedings of the Courts of law, Urdu should enjoy the same status as Hindi. In the Draft Constitution, Urdu has been denied this status. It is high time this is recognized as such.

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“ Besides, education of a minority should also be particularly safeguarded so that by controlling its education the majority may not undermine or lay the axe at the root of its cultural life. In this respect India should follow the shining example of Canada. In the Province of Quebec, the Board of Education has two wings, one a Protestant and a British wing and the other a Catholic and a French wing. So, each has schools according to their ideas and ideals. In India the denominational schools and colleges should not be wiped off for make-believe reasons. Besides, separate Boards of Education and even separate Universities wherever possible must be set up. The Aligarh University, the symbol of Islamic culture with a history of its own should not be wiped off and even its name should be preserved and similar ones should be set up for the benefit of Muslims who number 50 millions in this land here and now. To achieve this laudable end the Constitution must provide that as a mandatory safeguard of its interests any minority may demand—the Muslim minority so demands—and secure the establishment of a separate Educational authority for its benefit. The Constitution should not only ensure protection of racial, linguistic and cultural interests but actively encourage and foster their growth and development by positive action as the Soviet Government does.

“ Lastly, it is pertinent to ask as to who would implement the safe-guards, who would supervise the enforcement of these blessed clauses of the Constitution which will provide for the protection of the minorities. On this vital point, Mr. N. C. Roy observes, as follows: ‘ We have seen ’, he says, ‘ that after the first World War the principal allied and associated powers took it for granted that the Government of a State could not be depended upon for the due enforcement of the provisions of the Treaty into which it would enter for minority protection. Accordingly they entrusted the responsibility of supervision to the League of Nations. In India also it need not be assumed that the Government concerned, when left to itself, will be quite in a position to enforce its constitutional obligations to the minorities. Its composition and still more the composition of the majority in the Legislature upon which it will be dependent are important factors in this regard and they being uncertain, some other procedure of supervising the enforcement of minority rights should be devised. It may be pointed out, of course, that the Courts of law will be there and may be resorted to with effect. They will certainly be an important guardian of minority rights as also of other rights arising out of constitutional laws. But, they cannot be the sole guardian. The composition of the Courts is an uncertain factor. Even in countries in which the Bench is independent, by law and tradition, of the Executive and the Legislature, the Courts may not always take a strictly independent and impartial view of a case involving some social controversy. Here in this country, most men are to-day infected with some kind of communal virus. It is too good to believe that judges of Courts, humanity being what it is, will be an exception to this rule and take always an impartial view of things. Rather the contrary may be expected—may God forbid. In view of this,

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some alternative machinery of supervision should be set up. The Sapru Committee has recommended the establishment of minority commissions both in the Centre and in the Provinces to this end. Even this scheme has its defects. But, the merits of the scheme may exceed its defects and therefore it may be given a trial. It is necessary that the ultimate responsibility of enforcing the minority rights should be vested in the Union Government. Democracy is not a kind of self-acting machine, as Dr. C.R. Reddi, once said, nor is it fool-proof or knave-proof. All Constitutions are machines. Man is more important than the machine. Political systems depend on the character of the people, more especially the spirit of consideration for others. The British Constitution rests on British character."

SRI B. NARAYANASWAMI NAYUDU :—" Mr. President, Sir, I will deal with amendments Nos. 1 and 2 of which I have given notice. The first amendment refers to Article 10(3) and the second to Article 23(2). My first amendment is—

Omit the word 'backward' in article 10(3).

I request hon. Members not to view this in any party spirit but to come to an independent judgment, especially, when the ban on party vote has been lifted and individual discretion has been allowed to play. I hope that will be done now. Article 10(3) runs as follows :—

'Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.'

Here, the State means, the Madras Government, the Bengal Government and other States and these States are free to make any provision for the reservation of appointments or posts in favour of any backward class of citizens who in the opinion of the State are not adequately represented in the services.

"On the other hand, clause 10 (1) says :—'There shall be equality of opportunity for all citizens in matters of employment under the State.' While that is provided for in clause (1), clause (3) says, the Madras Government is not prevented from making any provision for the reservation of appointments or posts in favour of any *backward* class of citizens and nobody else. That is not giving equal opportunity for all citizens in matters of employment under the State. Of course, we are not here concerned with private agencies, because each private agency has got its liberty to entertain whomsoever it pleases. But, so far as State patronage is concerned, there shall be equality of opportunity for all citizens in matters of employment.

"My next amendment relates to Article 23 (2) which says : 'No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.' My amendment is, add the following

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words at the commencement of article 23 (2) " Subject to the provisions of article 37 ". For instance, Sir, let us take the Brahman community. According to this Article, the Brahman community shall not be discriminated against in regard to the admission of any person belonging to that community into any educational institution maintained by the State."

SRI B. BHIMA RAO :—" We do not want to be treated as a minority."

SRI B. NARAYANASWAMI NAYUDU :—" I congratulate Mr. Bhima Rao for raising this question neatly and directly. It is a wonderful thing, Sir, that this debate on the Constitution of India is opened with clauses 10 and 23 which deal with State patronage of services. I must frankly admit that the right is given to a community to go to the Supreme Court and litigate. For instance, if the Government pass a communal Government Order saying that only one Brahman, four non-Brahmans, two Muhammadans and two Christians shall be employed in the service of the State, it is open to my hon. Friend, to say that he has not been given equal opportunity based upon merits and therefore, the communal Government Order is indictable in the Supreme Court and it is open to him to see that the Government Order is scrapped and place all the State services on, what may be called, competitive basis, because that is the best system. This is what may be called the justiciable right which can be agitated and will be agitated in the Supreme Court and especially with regard to communal Government Orders. I am sorry the Hon. the Finance Minister is not here because he can counteract it by saying, you are only three per cent of the population and how can you expect two out of fourteen seats; that is unfair. The question, therefore, arises at once, whether the Madras Government while issuing the communal Government Order can limit only certain posts to Brahmans and certain other posts to non-Brahmans, Muhammadans and the backward classes. Can they do it now, in the face of Article 10 (2)? I say, it shall not do except in regard to backward classes. There too, with regard to educational institutions, can the local Government say only 2 per cent of the Brahmans, 6 per cent of the non-Brahmans, 30 per cent backward classes and so many with regard to Scheduled Castes, can be admitted? Can it be done under this Constitution? I do not want to blink facts. The question has been raised and it has also been disputed by the Hon. Minister for Finance. In this connexion, I would like to read a portion dealing with what is called justiciable right. Of course, it may be a very big term and the meaning of ' justiciable right ' is also defined. I refer to Article 25 which says : ' The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by his part is guaranteed.' It is a sacred justiciable right and not merely pious wish. If the fundamental right of an individual referred to in Articles 1 to 24 are violated or sought to be violated, then every citizen who is aggrieved has got the right to go to the Supreme Court; that the right to go to the Supreme Court of India by appropriate proceedings for the enforcement of the

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rights conferred by this part is guaranteed. Let us see what is the right that is guaranteed to him. Clause 10 says, 'there shall be equality of opportunity for all citizens' except the backward class. So, if a Government Order is issued depriving or rather giving preference to other communities, then it is a justiciable right. It is also a violation of the rights conferred by clause 23 and therefore under clause 25, the aggrieved party can go to the Supreme Court. As I said, Sir, if the Hon. the Finance Minister had been here, he would say, how can you who form only 3 per cent of the population claim 50 per cent of the services by reason of merit. Is that a tenable ground? That is what he said as a matter of fact. So, Sir, is it not a justiciable right for the community concerned to go to the Supreme Court under section 25 and scrap this also. I wish hon. Members representing us in the Constituent Assembly to come and tell us what actually happened there and who has put in this word 'backward'. I shall show how in the beginning this word was not there at all. I am indebted to my hon. Friend, Dr. Lakshmanaswami Mudaliyar for giving me that volume of the proceedings of the Constituent Assembly containing a history of the clauses and I regret to say that 15th August is long past and we are now in May 1948, but still we are not yet placed in possession of the proceedings of the Constituent Assembly and this Government have not placed the proceedings of the Constituent Assembly even before this Legislature so that we may know what the intentions of the framers of the draft Constitution were for putting in this word 'backward'. Though I sent notice of a question about supplying copies of the proceedings of the Constituent Assembly, there was no answer and copies of the proceedings of the Constituent Assembly are not available even in the Library. But for the timely help given to me by the hon. Dr. Lakshmanaswami Mudaliyar, I should be entirely in the dark. Let us now see what the position is. The clause as it originally stood was 'There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of so and so. It goes on to say 'and nothing herein contained shall prevent the State from making provision for reservation in favour of classes who in the opinion of the State are not adequately represented in the public services'. That is the clause which was originally moved in the Constituent Assembly."

MR. PRESIDENT :—" May I know what the hon. Member is reading from? "

SRI B. NARAYANASWAMI NAYUDU :—" I am reading from the debates of the Constituent Assembly, dated 30th April 1947. I hope the hon. President will excuse me if I take time in reiterating this point. In the new clause, article 10 (3) it is stated : ' Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who in the opinion of the State are not adequately represented in the services under the State.' Note the word 'backward' here. This word was not in the original

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draft but was subsequently put in. The words which were originally used were 'any class of citizens who in the opinion of the State are not adequately represented in the services under the State,' to which the hon. Mr. Munshi moved an amendment, namely: (a) there shall be equality of opportunity for all citizens in matters of public employment; (b) no citizen shall only on grounds of religion, caste, race, etc., be ineligible for public offices; and (c) nothing contained herein shall prevent the State from making provision for reservation in favour of depressed classes'. Thus, the amendment of Mr. Munshi in favour of 'depressed' classes did take away the whole principle of the original clause. That was what Mr. Munshi did and then it was moved that the amendment of Mr. Munshi be adopted. The motion was adopted. Therefore, what is the position? The position is 'Nothing herein contained shall prevent the State from making provision for reservation in favour of classes' and Mr. Munshi's amendment was also in favour of classes. However, we have to take only what was passed by the Constituent Assembly. Therefore, Sir, I must confess I am not at all fully conversant with all the debates that took place in the Constituent Assembly and that is why I say I shall be very much obliged to members of the Constituent Assembly if they can throw any light on the history of this legislation. The local Government was given power of reservation in favour of all classes of persons who in the opinion of the State are not properly represented in the services. But, when we come to the drafting committee—after all the scorpion has got only one sting—I do not know the reason why they substituted 'any class' by 'backward class'. Is it not retrograde of the original intentions of the party or against the inherent right that has grown up, unless you call it drafting business. Is it decent drafting, I ask, to check the power of the State or the local legislature to legislate with regard to classes of persons who according to them are not adequately represented in the services. The old Government of India Act is again re-drafted more or less on the same lines. It is not the head that is going to move the tail but it is the tail that is going to move the head. Integration of certain communities regarding service matters is very baneful to their prosperity. If they find that certain communities are dominating either in services or in other things, the State is at perfect liberty to see that the dominance is not there and equality is maintained. Is it what you call parochialism; is it what you call communalism? The State can take away property, the State can reserve certain rights in favour of particular classes. If any one class is over-weighted, how is it to be remedied; the question will then be to cut out somebody. Who is to be cut out? My friends will say; cut out by reason of marks. I say: you cannot cut out except on the basis of backwardness. This is a thing which is intimately associated with the politics of this Presidency and I therefore, appeal to you to restore the clause as it originally stood, that is, that provision might be made for the reservation in favour of any class rather than the imaginary backward classes. If it is good for the backward classes, it is good for the other classes also and it is good for those who are over-weighted.

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in the services. The simple question will be and the vote will be on the question whether you want the communal Government Order in this Presidency or you do not want it; or I should wish to put the matter before you in a blunt way; Do you wish to say that the Madras Government should have power in respect of persons who are not sufficiently represented or do you want to say that the scheduled classes alone will be given and not others.

“ With the word ‘ backward ’ which did not find a place in the article as it originally stood, it would nullify the powers of the Government to enforce the communal Government Order, since reservation except for backward classes would be a violation of equal opportunities assured to all citizens under Article 10 (1) and it would become justiciable and friends like Mr. Bhima Rao and others can agitate in a court of law. Whatever the decision may be, it is justiciable right, which can be carried up to the Supreme Court.”

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—“ I second the amendment.”

MR. PRESIDENT :—“ The question is—
‘ that in article 10 (3) the word “ backward ” shall be omitted.

In article 23 (2), add “ subject to the provisions of Article 37.” ’

What about 23? ”

SRI B. NARAYANASWAMI NAYUDU :—“ The object of my amendment is that Article 23 (2) should be read subject to the provisions of Article 37.”

MR. PRESIDENT :—“ It is not properly worded.”

SRI B. NARAYANASWAMI NAYUDU :—“ In article 37, we have the weaker sections not merely the depressed classes and the scheduled castes. My intention is that 23 (2) should be made plain with reference to Article 37.”

The amendments were put and carried.

SRI B. NARAYANASWAMI NAYUDU :—“ Mr. President, I am very thankful to the House for the way in which it has carried my amendments. I am glad that for once the Hon. Members have put reason above party and endorsed what is legitimate. I feel happy that we all desire that the Constitution of India should be a right type and pattern of Constitution. The amendment that I am proposing is of much more importance than the previous ones. The President is the head of the State is the Commander-in-Chief of the Army and in addition he has got other powers of patronage and he can if he so chooses become a tyrant and begin exercising despotic powers. We must bear in mind that background; we have so many communities here who have got military traditions, the Mahrattas, the Sikhs, the Telugus who are proud of the past and we must guard ourselves that the President does not

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turn his presidential power into a dictatorship or to found a dynasty. Before you elect him to that office, you must make sure with reference to how he is going to be elected and that these eventualities will not arise. Article 43 deals with the election of the President. The electoral college is to consist of the members of both Houses of Parliament and the elected members of the Legislatures of the States. We are going to have the Council of State with 250 members, 15 of whom are nominated—and they do not partake in the elections—and the House of the People and there are the elected legislatures in the various provinces, the right of electing being also afforded to the elected members of the Upper House in the Provinces. The first point to be remembered is that the various members elected to the various legislatures who elect the President were elected only for the purpose of State representation on the basis of domestic policies and programmes and nowhere in the process of elections are the people called upon to elect their representatives for the election of a President of the Union. The President is not a person who owes his office to the suffrage of the people. When it is a question of domestic policies, the people might vote in one particular manner and yet in a different fashion when the election of the President is involved. Though it is stated that it is an indirect election, it is not. I shall take the case of the United States of America. It is provided in that Constitution that—

‘Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an elector.’

Procedure is thereafter laid down for the conduct of elections which states that “the electors shall meet and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves.” So here, it is not, the Legislature that returns the President but people are to be appointed as electors for the specific purpose of electing the President and they form the electoral college and not as here the members of both Houses of Parliament and the elected members of the Legislatures of the States. I do not take the case of Australia, Canada and South Africa who work under the Cabinet system. Let us take the Swiss democracy. There too the position is different from what has been laid down here. I wish to impress upon you, Sir, that the President does not owe his office to the suffrage of the people. The electors who were returned as representatives to the Provincial Legislatures or to the 235 seats in the Upper House at Delhi and the Lower House at Delhi, were not elected specifically to vote directly for electing the President. The elections were on the basis of policies and programmes and they might fare differently if the issue was separately raised. In such an election we elect people whose votes determine who the President shall be when the vote that is given to them does not carry with it the vote to determine who the President is to be. Even in Soviet Russia the Supreme Executive authority vests in the

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Councils of the People's Commissars. I feel very strongly that the power of electing the President must be in the hands of the people and that must at least be by the persons elected and called upon by the people to vote for the specific purpose. My difficulty is that the persons who might have been returned to the local legislatures might be out-voted by other interests and that should not be allowed. Take the elections to the Constituent Assembly, they were elected by the Lower House; it was not decided by the electors who their representative shall be on the basis of what interests they are to represent there. The Parliamentary Boards came in with their suggestions and the party in power just carried out the suggestions and what was the result—the sheep and the shepherds, form the representatives to the Constituent Assembly. Where did the people come in here in this business? And how can we think matters will be very different in the case of the presidential election? I feel that this is a deliberate device to re-enact what is happening with regard to the election to the Constituent Assembly. The person elected specifically for the purpose will have only one loyalty and that is to the electorate that elected him for the purpose; but under the present system, there will be two loyalties, one to the electorate and the other to the Supreme Committee and they will have to act; and in what manner they will do, you can well see from what has happened in the case of the Constituent Assembly elections.

“ I move that for Article 67 (3), the following may be substituted :—

“(3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall be elected by the people directly from territorial constituencies based and constituted on property, trade, educational or taxation qualifications superadded to adult suffrage.”

“ You are now introducing a Constitution for a sovereign State; you have got the right to make war and to conclude treaty. For making laws for this Union, the Lower House is there elected on the basis of adult suffrage but what about the Upper House? In the Constitution, it is provided that the Council of States shall consist of two hundred and fifty members, of whom fifteen should be nominated to represent certain interests specified in the Constitution and the remainder ought to be representatives of the States. These representatives ought to be elected by the elected Members of the Lower House or of the House if there is only one. My question is, why should this not be constituted on a direct election basis? You have adult franchise, viz., the *juttu* vote, everybody who has a tuft of hair has got the right of vote. Why when there is adult franchise for the Lower House, for the Upper Chamber we should not have this kind of election? It has got a weight of its own to be elected thus.”

MR. PRESIDENT :—“ What do you mean by ‘ superadded to adult suffrage ’ ? ”

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SRI B. NARAYANASWAMI NAYUDU :—“ That means, that the voter should be a person not less than 21 years of age and there must be other qualifications, viz., qualifications of property, trade, education or taxation and the election should be on the basis of territorial constituency. From the Federal Constitutions of the world, we see that in the United States each State returns two Senators elected directly and they must be thirty years of age. In Canada, according to the Act of 1867, the property qualifications is four thousand dollars, age thirty years and there is the qualification regarding residence also. In South Africa, the age is thirty and the property qualification is five thousand pounds. When we come to Soviet Russia, there is no private property qualification and every elector is entitled to stand as a Member. This is what we have got in the several federal or unitary constitutions. The election is there and the franchise is there. Only the qualification for franchise is higher so as to act as a poise to what may be called mob vote. In this Draft Constitution, whom does the Upper House represent? Does it represent the vested interests, trade, commerce or industry? It represents nobody; it represents only the Lower House. Therefore the representatives in the Council of States should be elected directly by the people. Raise the age of a voter to thirty and add to it some property, trade, educational or taxation qualification. Then there may not be what may be called mob democracy or the democracy of vested interests. After all, we must know the pulse of the worker as well as the employer, the pulse of the patient and the pulse of the doctor.”

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MR. PRESIDENT :—“ I suppose the patient will feel the pulse of the doctor!” (Laughter.)

SRI B. NARAYANASWAMI NAYUDU :—“ The pulse is the concern of the patient and the pocket is the concern of the doctor. Between the pulse and the pocket, the patient suffers.

“ The State Legislative Council also is constituted in a most wonderful way. It is a pity that the Hon. Leader of the House simply stood up and moved the motion without explaining how the Council of States and the House of the People are to be constituted, how the State Legislatures are to be constituted and so on. The members ought to have been told about them. I confess my inability to understand many of the provisions. Members of the Constituent Assembly, who have been watching the deliberations for days together, will be able to explain the provisions better.”

MR. PRESIDENT :—“ I don't think the Hon. Leader of the House is in the Constituent Assembly. I take it that he is in the same position as the hon. Member.”

SRI B. NARAYANASWAMI NAYUDU :—“ Article 150 (1) provides that the total number of members in the Legislative Council of a State shall not exceed twenty-five per cent of the total number of members in the Legislative Assembly of that State. If the strength of the Legislative Assembly is 300, the strength of the Legislative Council will be 75. One-half, i.e., 37 members

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will be chosen from panels, one-third, i.e., 25 members will be elected by the members of the Legislative Assembly and the remaining 13 will be nominated by the Governor. That is how the Legislative Council is to be constituted. Who are the persons who will be chosen under the panel system? Persons who have special knowledge of—

literature, art and science (Pundits!)

agriculture, fisheries and allied subjects,

engineering and architecture (here again Pundits!), and

public administration and social services.

This is what is called functional representation and is borrowed from the Irish Constitution. That is how the second Chamber is to be constituted. Really this is not a second chamber but a mere pretence of a second chamber. What is the second chamber for? To know whether the lower chamber reflects what may be called democracy. Hon. Members will know that money Bills are not for the Upper House. Only the Lower House deals with money Bills. The Upper Chamber is merely a revising chamber, a reviewing authority. It seems once the American President was taking coffee in company. He turned to his neighbour and asked: 'You are a Republican. How is it that you want a Senate, a second chamber, with guaranteed powers?' He turned round and asked: 'You have got the coffee and the cup. Why do you want a plate?' The President replied that it was intended to let off steam when coffee was poured in. The Republican replied that the second chamber also served a similar purpose. The Upper Chamber is not merely a replica of the Lower Chamber. It is said that functional representation had not worked well in Ireland. When you are introducing adult franchise and when you are giving power to the Lower Chamber to deal with money Bills, you should so constitute the Upper Chamber as to allow the steam to be let off. The Constitution as drafted is wrong. It should be re-arranged so as to provide for the election of the President directly by the voters and for election to the Upper Chamber by people directly from territorial constituencies based and constituted on property, trade, educational or taxation qualifications superadded to adult suffrage. You may be asked: 'After all, who are we? Great constitutional pundits at Delhi have devised this mechanism. How can we put our hands in it, as any change may have terrible repercussions?' But after all this is only a Draft Constitution. I put before the House two propositions. Do you want the President to be elected by an electoral college or by the voters coming from the countryside? Do you want the Upper House to be a mere replica of the Lower Chamber or do you want its members to be elected directly by voters having extra qualifications superadded to adult suffrage?"

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I second the amendment."

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* SRI N. RANGA REDDI :—“ Mr. President, Sir, I would like to make a few observations on this amendment. In spite of the able speech of my hon. Friend Mr. Narayanaswami Nayudu, I remain unconvinced. The main point in his argument seems to be that an ordinary voter is superior to an elected representative in the legislature. He said that an elected representative could not vote independently as he was subject to party discipline and that therefore he could not be trusted with the vote in the election of the President of the Indian Union or to other bodies to which he was entitled to vote. I submit that this is an erroneous assumption. It is rather difficult to imagine that an ordinary voter is not swayed by party cries. From my reading of the British Constitution and the results of elections in various countries, I submit that very few voters remain independent, and a majority of them vote according to the party mandate. In the same manner I beg to submit that even in the elections, if the ordinary voter to the Madras Legislature is given the franchise, the vote will not in any way be different. On the other hand, I am sure that the Members of the Legislature will exercise their votes much better and with much more discretion and their votes will be certainly superior. My hon. Friend Mr. Narayanaswami Nayudu seems to think that the ordinary voter is a very intelligent person and that he can discriminate between one man and another and that in matters relating to education, public health, medicine, etc., he is a very competent person to judge things right. I say, Sir, it is wrong to presume so, and it will be dangerous to entrust the ordinary voter with the task of electing representatives to the Council of State.”

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p.m.

DR. SYED TAJUDDIN SAHIB :—“ How he ought to vote is the question.” (Interruption.)

* SRI N. RANGA REDDI :—“ Sir, my point is this. So far as the election of the Members to the Council of State is concerned, I think it is much better to entrust the voting to the elected members of the Legislature. My hon. Friend, Mr. Narayanaswami Nayudu has suggested that these representatives should be elected by the people directly from territorial constituencies, the franchise to the people being based on property, trade, educational and taxation qualifications. Even if all these qualifications are added, it is a very doubtful proposition whether the complexion of the members who will be elected to the Second Chamber will in any way be different from that of the members that will be elected to the Original Assembly. Both the present system of elections and the system that has been proposed under this new Draft Constitution will give a new complexion altogether to the Second Chamber. My learned friend has been complaining that this is altogether an innovation, or that the proposal adumbrated in the Draft Constitution is quite a different one from what is found in the American or Australian Federal Constitutions. Sir, those constitutions were framed years ago and experience has shown that those constitutions have not been working satisfactorily. But the framers of the present Constitution have said that we shall

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try this new method of functional representation for some time. It may be that functional representation may not work as satisfactorily or as successfully as desired by my hon. Friend Mr. Narayanaswami Nayudu. But how is this territorial constituency, which he now suggests, going to work better? Very complicated questions might arise for discussion. After all the qualifications that are prescribed by this proposition for a particular candidate to stand for election are merely ordinary. He should be above 21 years of age; he should possess some wealth and he should have some educational qualification. How can a person of that standard elected to the Second Chamber be expected to comprehend such matters as inflation, currency, medicine, engineering, etc., which often come up there for discussion and voting? Naturally therefore, we want some people who are experienced in these things to discuss and to debate and to give their votes. It is for that purpose that functional representation has been provided for in this Constitution. After all, all the members of the Second Chamber are not sent there on the basis of functional representation. Only a few people will be selected on the basis of functional representation. If you do not have this functional representation, and if you do not have provision for this nomination, then I submit, Sir, that many of the people who are in the trades and other technical professions will not get their entry into the Second Chamber or find their way into the portals of the Legislature. Even persons like my hon. Friend Dr. Sir A. Lakshmanaswami Mudaliyar with their brilliant talents and expert knowledge may not be able to find their way into the Second Chamber, if they do not belong to any political party. Perhaps they may not even care to stand for elections at all. How then could those people be got into the Legislature for the benefit of the country? "

SRI B. NARAYANASWAMI NAYUDU :—" Sir, the hon. Member is apparently under a misapprehension. I am not at all seeking to amend Article 67 (2) which provides for nomination of members on the basis of functional representation. That is not my point at all. My amendment pertains to only Article 67 (3) which is entirely different."

SRI N. RANGA REDDI :—" Sir, the hon. Member wants everything to be done by means of elections on the basis of territorial constituency. How then could he expect to get professional experts and men of talents, except by means of nomination? "

SRI B. NARAYANASWAMI NAYUDU :—" My point is that members to the Second Chamber should not be elected by the Members of the lower House, but should be elected directly by people on a territorial basis. I have no objection to bringing in men of talents by means of nomination under Article 67 (2)."

* SRI N. RANGA REDDI :—" But you do not want nomination at all. How could you get such people without nomination? Those people will be reluctant to stand for election and you will not be able to get the advantage of their expert knowledge and valuable

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advice by participation in the debates in the Second Chamber. Therefore, Sir, these are some of the objectionable features which I find in the amendment of my hon. Friend Mr. Narayanaswami Nayudu. If you really want people like my hon. Friend Dr. Sir A. Lakshmanaswami Mudaliyar to find a place in the Legislature, then there is no other way of getting them there except by means of nomination. Therefore I oppose the amendment moved by my hon. Friend."

SRI M. NARAYANA RAO :—" Mr. President, Sir, I am glad that for once I have been able to support Mr. Narayanaswami Nayudu's amendment. He said that the election of the President should be by a separate electoral college. I am also of the opinion that the electors should be able to exercise their votes with discretion. The Members of the Legislative Assembly and the Legislative Council stand on a different basis. The election of the President is quite a different matter and I am of the opinion that the electors should form an electoral college and elect the President of the Union. That is a very good idea. Suppose the village panchayat is invested with powers of electing the President of the Union. We still want that the Provincial Legislatures should have a voice in the election of the President of the Union and also regarding the election of the Governor.

" Sir, with regard to the election of the Governor, two alternative methods are proposed in this Draft Constitution. Article 131 of the Draft Constitution states—

"The Governor of a State shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State."

or alternatively

"The Governor of a State shall be appointed by the President by warrant under his hand and seal from a panel of four candidates to be elected by the members of the Legislative Assembly of the State, or, where there is a Legislative Council in the State, by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot."

" Sir, I am in favour of the first alternative, because the Governor of the Province also should be elected by the people themselves and not appointed from a panel of four candidates elected by the Members of the Legislature of the State, because the latter alternative means that the Governor of a Province will be nominated by the Members of the Legislature and by the President of the Republic. We know, Sir, that elections to the Provincial Legislatures are conducted on a purely party basis and that it is the party machinery that organizes everything, chooses the Ministers and carries on the entire administration of the Province. That is to say, party affiliations and party loyalties and party ties will play a great part in the matter of elections and so there is bound to be some sort of understanding between the President of the Republic and the Members of the Legislature as to the choice of the Governors of the Provinces. Sometimes this will lead to an unhealthy understanding between the two and it

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may be that the people of the Province may want the Governor to be entirely above politics, and by the second alternative, such a person will not be able to fill up the place of the Governor at all. I therefore suggest that it is better that there should be electoral colleges separately formed by the people themselves for the election of the Governor. I am sure that the nomination of the Governor will lead to **unhealthy practices and unhealthy** relationships between the President of the Union and the Provincial Legislatures and the Governor who is expected to be above parties, could not act as such, if he were nominated under the second alternative, and therefore I am against it.

“ So far as the Upper House is concerned, I am of opinion that there should be a separate electoral college for this purpose also. I think that Mr. Narayanaswami Nayudu's idea is that a portion of the members of the Upper House at the Centre might be nominated as laid down in Article 67 (2) of the Draft Constitution. I do not think he means that all the members of the Upper House should be elected. His amendment is only with regard to sub-section (3) of article 67, where he suggests direct elections by the people, instead of indirect elections through the members of the Lower House of the Provincial Legislature. I do not think that there need be any serious objection to it at all. According to this article about 15 members could be nominated by the President himself and the President will certainly take care to see that eminent and talented persons like Dr. Sir A. Lakshmanaswami Mudaliyar are brought in to advise, guide and inspire the Council from time to time. There is no difficulty at all in getting such people there, so long as nominations are provided. Therefore I heartily support the amendment of Mr. Narayanaswami Nayudu, because I feel that people should have a voice in the election of the members of the Second Chamber as far as possible. The people should not entrust their duties to some others, which means a system of voting by proxy and such a proxy system should be avoided as far as possible. I for one, am against that system altogether. We are only too familiar with the evils of the proxy system of voting even in joint-stock companies. I do not want that our Second Chambers should be converted into a sort of joint-stock concern. People should be allowed to have their free expression of opinion in matters concerning the administration of the State and to exercise their votes in the best manner they like.”

* SRI B. BHIMA RAO :—“ Mr. President, Sir, I regret, I have to differ from my hon. Friend Mr. Narayanaswami Nayudu on this occasion. With regard to the election of the President, I do not see the force of the objection raised by him, because the members of both the Houses of Parliament are elected excluding the 15 members who will be nominated by the President, and if we elect those members, we can as well charge them with the responsibility of selecting the President of our choice. I do not see why we should adopt the elaborate machinery prevailing in America to have a separate electoral college for the election of the President. I do

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not know if my hon. Friend knows the troubles and inconveniences caused and the expenditure that is incurred with regard to the Presidential election in the United States of America. In a book which I happened to read sometime ago written by Dr. Sudendra Bose in the year 1910, it was stated that in the Presidential elections held in 1910,—four decades ago—the expenditure to the State came to about five million dollars, which amounts to about Rs. 2 crores. We cannot have such elaborate processes to choose a truly democratic or a truly republican candidate, whatever nomenclature may be given to him in India, and have an electoral college and then elect the President. To have such a machinery would be very very inconvenient and expensive to the public. I think therefore ^{4 p n.} the procedure that has been prescribed in the Draft Constitution of India, in Article 43, for the election of the President is very simple. My honourable friend is afraid of this party system now that we have achieved independence. I do not think there is any more necessity for any party system. We will have the best candidates. We can select the best 10 or 12 and vote for them. I do not think we have any difficulty whatsoever; and the apprehension entertained by my honourable friend is simply imaginary. So, with these few words so far as that amendment is concerned I have to differ from my honourable friend.

“Then, Sir, with regard to the election to the Upper Chamber in the Provincial Legislatures, my honourable friend prescribes a method something like the one that prevails at present; whereas Draft Constitution wants more cultured men. Of course, the University Vice-Chancellors will certainly be represented there.”

MR. PRESIDENT :—“The whole House seems to be anxious to have Dr. Lakshmanaswami Mudaliyar in the future Upper House also.”

SRI B. BHIMA RAO :—“Nobody will have any objection; and on the last occasion we had three Vice-Chancellors, the Vice-Chancellors of the Madras, Andhra and Annamalai Universities—may be by nomination. Now it will be by means of selection from a panel. From the first panel, there will be the representatives of the universities and here we will have a more cultured element, those who are well-versed in literature, arts and sciences and then industries, fisheries, etc. (which subjects come up frequently in this House) and other trades and professions. I think this is more broad-based. We want to have a better representation of all kinds of professions in this House to give the utmost help in passing the necessary legislation. So, with these few words I regret I have to differ from my honourable friend Mr. Narayanaswami Nayudu.”

* SRI C. N. MUTHURANGA MUDALIYAR :—“Mr. President, Sir, I had no wish to participate in this discussion. When the resolution was moved in this House on a non-official day I was really against it; I did not want that this Draft Constitution should be discussed in this House. And I think I am right because no other provincial legislature in India has taken upon itself the responsibility of discussing this Constitution. But Sir, being now in the midst of the discussion, I am more inclined to agree with

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Mr. Narayanaswami Nayudu in this particular amendment, though not in others. I entirely agree with him that the system of direct election must alone be supported for the Upper House in the Central Legislature. Of course, there are some difficulties and I do not mind these difficulties. We have developed this system of direct election for the Council of State from the moment the Council of State was formed; and I do not see any reason why at this late hour we should go back upon the system of direct election and ask for indirect election or functional representation and so on. Functional representation will come of its own accord as experience grows. But I cannot entirely agree with my friend Mr. Ranga Reddi when he said that he relies more on the integrity of the members of the Legislature in choosing the President rather than the electorate. Sir, I am inclined more to trust the electorates than the Legislatures. As he himself said, they are subject to party discipline. They may be whipped into doing something that they are not themselves willing to do. Besides that, we know what discipline is, how much that discipline is honoured more in the breach than in its observance. Under these circumstances, I do not feel called upon to agree with Mr. Ranga Reddi over the system of indirect election or an electoral college. I would prefer a direct election as we have been carrying on all these days. No doubt, my honourable friend suggested that such valuable friends like Dr. Sir A. Lakshmanaswami Mudaliyar may be a loss to us, if there is direct election. Certainly I have no such fear. If Dr. Lakshmanaswami Mudaliyar is to go into the midst of the electorate, I have no doubt that he will be elected; even if he is not elected, with all due respect to him, let me say, Sir, that it does not matter; and perhaps also he is not indispensable. He has got other fields to work and certainly his valuable work in those fields will be appreciated everywhere and will bring him into the Upper Chamber of the Central Legislature also, if he wants to go. The electorate is not composed of such illiterate people as would not appreciate merit. They would certainly choose the proper man when the time comes. I really support it.

"Now, Sir about the other amendments of Mr. Narayanaswami Nayudu which may come later, I wish to say something on the one relating to the Upper Chambers of the Provinces. I think, if there are to be Upper Chambers in the Provinces, there also it should be by direct election and not by any other method. But my sincere and individual opinion is, and many an honourable member in this House knows it, there should be no Upper House for the Provinces. The Central Legislature must alone be a bicameral one, but the Provinces should have only unicameral legislatures. And I am strengthened in that view by the fact that there is a provision in the constitution for the formation of linguistic provinces. It is not only Madras, it is not only Andhra that is clamouring for linguistic Provinces. Everywhere there is clamour for linguistic Provinces. There is a linguistic Provinces Committee which is an all-India Committee that will go into the question. No doubt, the Constituent Assembly has put a full-stop to

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the linguistic provinces agitation and it will come after the Constitution is brought about. Let it come whenever it does. I am not enamoured of linguistic provinces. As I have already stated on another occasion, I would certainly be a member of the joint family of the Madras Province, but if some members of the Province want to separate, by all means we have to support them to have their own Provinces. Sir, it is not a question of Madras alone, it may be a question of Nellore, Chittoor or Tirupathi. I would not have raised that issue but for Mr. Narayanaswami Nayudu's reference to it. Certainly, Sir, whether it is Madras or Chittoor or Tirupathi wherever the Tamils reside, and wherever there are Tamil areas forming part of the Tamil Province, historically and by population, they must belong to Tamil people. That is all that I have been claiming. And those are the two issues,—historical and population basis,—that will be taken into consideration. The issue will be decided by the Boundary Commission, which will certainly decide which areas belong to the Tamils, and which to the Andhra Province and Madras will certainly be declared part of the Tamil Province. There need be no quarrel nor any cutting of throats, as many honourable members have apprehended. There need be no such apprehension. Have we ever quarrelled? No, certainly not. It is only a quarrel of words; that will go; that is not of much concern.

“ Then, Sir, the Constitution has been drafted ably in spite of its defects. And the Constitution is not a rigid one, as some members made out. It is capable of improvement as experience is gained, because it might be re-drafted; a new Constituent Assembly may sit after 5 or 10 years and the Constitution may be amended in order to suit the times. Why should we be so apprehensive now of this Constitution and make all sorts of alarming suggestions?

“ Then, Sir, during this discussion questions relating to communal appointments, and communal selections have been brought in. I do not know to what purpose. They need not have come in at all. Mr. Narayanaswami Nayudu suggested that backward classes have been put in place of all communities.”

MR. PRESIDENT :—“ That matter is over.”

SRI C. N. MUTHURANGA MUDALIYAR :—“ Yes, Sir, but I want to refer to it again. These communal questions have been cropping up every now and then, from one side of the House or the other. There is no need for raising them now. On one side, people are moving resolutions and Bills to abolish caste and on the other, people are saying that the communal Government Order must remain and the Congress Government has not done anything to deserve the condemnation that they have become communal and anti-Brahmin and all that. They have not started on a clean slate and the Advisers' Government had come into a place that had been vacated by the Justice Party. The communal Government Order and selection committees for admission to colleges existed for a long time; they must gradually improve upon these. We have said that merit alone counts. How is it to be decided?

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Is it to be decided by marks alone? Certainly not. If you want to abolish caste and the communal Government Order I would suggest the abolition of examinations also. It is these examinations that are the bane of the country nowadays. Is the mark achieved by a student a real test of his merit?"

MR. PRESIDENT :—" I do not know why the hon. Member did not speak then."

* SRI C. N. MUTHURANGA MUDALIYAR :—" No, Sir, with your permission, I am making a general survey of the position. I am saying that these examinations are not the real test of merit. The examiners may have some pet students, and may give higher marks to them. Then again, the students, in their anxiety to get a pass, get into the Government Press and manage to get their question papers in advance. How is it a test of the merit of the boys? Certainly not. There must be other tests and those other tests must be devised by our Vice-Chancellor and other such big educationists. That is the only way by which merit may be recognized. And then after all, my sincere and individual opinion is that these selections to Colleges, and these communal appointments must all go.

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p.m. " Now caste has gone. No doubt, you may bring in Bills, but that is of no use. Varnasangrama had started; not now but centuries ago and it is going on galore. So, Sir, caste has already gone and no legislation is needed for that. When the caste has gone, why should we have these caste representations and communal Government Orders? They must ago. To-day is not Dr. Nair's day or Muthiah Mudaliyar's day. It is disgraceful for us to go under the name of non-Brahmins and allow this communal principle to be perpetuated. The non-Brahmin boys and the non-Brahmin girls are not as backward as they were represented to be some 20 years ago. They have improved very much. They have become very intelligent and they can surely compete with the Brahmin boys. Every boy or girl born in India must have admission to colleges. A large number of colleges and high schools must be started in the country so that no child would be refused admission."

MR. PRESIDENT :—" May I know if the hon. Member has any views about the election of the President? " (Laughter.)

SRI C. N. MUTHURANGA MUDALIYAR :—" About the election of the President, Sir, I agree with Mr. Narayanaswami Nayudu that it should be election. I do not want to dilate upon it much further."

MR. PRESIDENT :—" I now put the first amendment relating to the election to the Federal Council of States. It reads as follows :

' For article 67 (3), substitute the following :—

" (3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall be elected by the people directly from territorial

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constituencies based and constituted on property, trade, educational or taxation qualifications super-added to adult suffrage ". "

The amendment was carried.

MR. PRESIDENT :—" I now put the other amendment relating to the elections to the local Council of the State. It reads :

' For article 150 (2), substitute the following :—

" The members of the local Council of State shall be elected by the people directly from territorial constituencies based and constituted on property, trade, educational or taxation qualifications super-added to adult suffrage ". "

The amendment was carried.

MR. PRESIDENT :—" Then I shall put the amendment relating to the election of the President; the amendment reads :

' For article 43, substitute the following :—

" The President shall be elected by electoral delegates chosen by the peoples of the states on the analogy of clause 2, section 1 of Article II and Article XII of United States of America ". "

The amendment was carried.

MR. PRESIDENT :—" It seems to be a red letter day for the hon. Member, Mr. Narayanaswami Nayudu. I hope he will be very short hereafter."

SRI B. NARAYANASWAMI NAYUDU :—" I move the following amendment to the alternative to Article 131, Sir, namely :

' Add to the alternative to article 131 the following :—

" and by all the members of the District Boards and Municipalities or other local Government institutions of the State corresponding to them and by all the presidents of the panchayats in the States ". "

Sir, we had a discussion about the President. We get his opposite number in the Governor. The alternative to article 131 as it stands, Sir, says that the Governor of a State shall be appointed by the President by warrant. . . . from a panel of four candidates to be elected by the members of the Legislative Assembly of the State or, where there is a Legislative Council in the State, by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable votet and the voting at such election shall be by secret ballot. As I already said, Sir, he is the counterpart of the Governor-General. Therefore, it is Sir, that I say when you do not have electoral colleges and when you want the representatives in the Assemblies and the Councils to be electors I go further and say, if you want such a kind of electors, it is not only these people who are representatives of the people, but there are other representatives also, such as the district boards, the panchayats, the municipal

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councils, etc. Therefore I say that the members of the district boards, municipal councils and other local institutions of the State corresponding to them and all the Presidents of the panchayats should have a voice. If you don't want a direct election and electoral colleges, if you want indirect election, then why on earth should you confine it only to the members of the Assembly and the Council? My hon. friend, Mr. Ranga Reddi, wants to say: how is the elector superior to me by whom I have been elected. I cannot understand it, Sir. He is not only superior to you. He is your creator and therefore you have no right to challenge him at all. He has shown sufficient wisdom in selecting you and he will have enough wisdom in selecting the Governor. From whom is the power derived? The power is vested in the people and the people have elected you to govern because they cannot directly govern. They send you as their representatives. It does not mean that even with regard to the election of the Governor of the Province and such other matters where the privileges of the people are concerned, they leave everything to you. Sir, when you elect a member to the legislature, there are what are called the scheduled classes. You do not give them separate representation. They go along with you and elect you. But when it comes to a question of the election of the Governor or the President they will not certainly vote according to what you think they will do. There is a proverb:

‘పదుగురాడునుట పాటియై ధృత్యై
ఒక్కరాడునుట ఎక్కడెందు.’

There is no use your arguing that the electors should not be given the power. When you want indirect election at least understand the electorate can be represented not only through the members of the Legislature but also by the members of the district boards, municipalities, etc. Are there not leading members who are in touch with the local life? That being the case are their hands to be tied down with regard to the election of the Governor, by the vote they gave to Mr. Ranga Reddi, and could they not decide whether they would have the Hon. Mr. Prakasam or any other person as the Governor? Therefore I say that Mr. Ranga Reddi has no power to say: because you elected me I shall go on representing you in all things. He has been elected to the Provincial Council for performing some specific functions. With regard to other functions the electorate should have the power. Therefore I suggest that all the members of the district boards, the municipal councils and other local institutions and all the Presidents of the panchayats should have also the power to elect a Governor. I want the electorate to be as wide as possible and not a restrictive one."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I second the amendment, Sir."

MR. PRESIDENT :—" The hon. Member may move his fifth amendment also."

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N Y YU

SRI B. NARAYANASWAMI NAYUDU :—" I move, Sir—
that after the word " persons " in article 131 insert the words " who have been elected to membership to various bodies under the District Municipalities Act or Local Boards Act and who are graduates of the Universities in the States."

" As culture and other things have been pointed out, Sir, I want all these things should form the electorate."

MR. PRESIDENT :—" I do not think the hon. Member wants to press it to a vote."

SRI B. NARAYANASWAMI NAYUDU :—" I do not, Sir."

MR. PRESIDENT :—" The hon. Member can move his sixth amendment also."

SRI B. NARAYANASWAMI NAYUDU :—" I move, Sir—
' that the proviso to article 132 (2) be omitted '."

* SRI B. BHIMA RAO :—" Sir, I wish to say a few words on amendments 4 and 5. I think that the argument now advanced by my hon. Friend is quite counter to the argument which he advanced for the prior amendment. He wants the President of the All-India Union to be elected by the people when there is provision for electoral colleges. Here when there is provision that the Governor of a Province should be elected by all people or as an alternative from a panel of a few names to be submitted by the members of the Legislative Assembly of the State and others referred to in article 131, my hon. Friend would suggest the addition of the words ' by all the members of the district boards, municipalities ' and so on. As you are aware, Sir, the members of district boards are big landowners. It is very difficult, Sir, for any ordinary man to get elected to the district board. I do not know if my hon. Friend has ever stood for election to a district board . . . "

MR. PRESIDENT :—" Oh, he has."

* SRI B. BHIMA RAO :—" I do not know, Sir. Probably he is a favourite of the landlords. (Laughter.) But, Sir, it is not the good fortune of many people to be the favourites of the landlords. At least that is the case so far as the Bellary district is concerned. It is a group of big landlords who constitute the district board. So also with regard to the municipalities, it is for the monied classes. For ordinary decent people it is very difficult to get elected under the District Municipalities Act. I do not know why my friend has put in these two classes of people, one the wealthy landlords and the other, the capitalists of the town. I think, Sir, he wants to take away the privilege of the common man and confer it on a few people. I think it is a retrograde measure that has been suggested by my hon. Friend."

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"With regard to the system of having a panel, Sir, I may say that it is working very well with regard to the Universities. You know, Sir, that with regard to the Universities the selection of the Vice-Chancellor is from a panel of three names to be submitted to the Governor of the Province. We know it is working very well for the last so many years and I am sure that this alternative which is put forward in article 131 is a very good measure. We could give the names of four candidates and the President could select one of them as Governor of the Province. I think what has been put in the draft is quite good and the alternative suggested by my hon. Friend is not really so good . . ."

SRI B. NARAYANASWAMI NAYUDU :—"Sir, . . ."

MR. PRESIDENT :—"There is no need to reply. Both the speeches of the hon. Members will go."

SRI B. NARAYANASWAMI NAYUDU :—"I only want to say, Sir, that I have not suggested any amendment to the method of direct election, Sir."

MR. PRESIDENT :—"I think the hon. Member has."

SRI B. NARAYANASWAMI NAYUDU :—"I have suggested it only in case it is to be indirect election, Sir."

MR. PRESIDENT :—"The hon. Member can move his amendments 8 and 9."

SRI B. NARAYANASWAMI NAYUDU :—"I move, Sir—
'that for article 193 (1) the following shall be substituted, namely :—

"Every Judge of a High Court shall be appointed by the Governor by a warrant under his hand and seal after consultation with the Chief Justice and Chief Minister of the State and shall be from among the members of the Bar or the Subordinate Judiciary of the State".'

This amendment relates to the High Courts in the States, Sir, and not the Supreme Court. The Draft Constitution provides that every judge of a High Court shall be appointed by the President, that is the Delhi President after consultation with the Chief Justice of India and then the Governor of the State in the case of appointment of a judge other than the Chief Justice and the Chief Justice of the High Court of the State. Take the High Court Judgeship of the Madras Province. Who is going to make it? The Delhi President is going to make it. Whom is he going to consult? The Delhi Chief Justice, then the Chief Judge of the High Court and then the Governor of the Province or State. What becomes of the Premier of the State? He is a cypher. We have taken this from the late Constitution of the British Government before they parted with power. They wanted to govern the services. They wanted to have what may be called the services divorced from the people. Therefore it was that the Governor-General was appointing the judges and removing the judges

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or doing anything without reference to the local Premiers. Now what is done is exactly the counterpart of that, namely, putting the services higher than the Premier. He has nothing to do with them. They say : why should you go and interfere with the judiciary, which is the bulwark of justice, as if the Premier will not be a bulwark and he will not support the law of the land and that he will go astray. What is the suspicion about? You have got a Premier elected. You can have confidence in him and in his Cabinet. There is absolutely no objection with regard to the judges of the Supreme Court. But with regard to the State High Court Judges, what is the justification for vesting the power of appointment in the President of the Indian Union? If the British Government did it, it was because they wanted to keep judges in their own hands. Why do you bring that into this Constitution? Why do you want the President of the Indian Union to have the power to appoint State High Court Judges after consultation with the Chief Justice of India, the Governor of the State, and the Chief Justice of the High Court of the State, leaving no voice for the people of the State who really carry on the administration of the State. Therefore, Sir, I think this is a fundamental mistake. They have simply copied from the Federal Constitution of India and substituted for the British Government their own Government, that is, President in the Centre and Governors in the Provinces. The President is not going to be elected by the people. The Governor is not going to be elected by the people. But the appointment of State High Court Judges vests in the President. Is this not a repetition of the Government of India Act which kept the suzerainty of the British Government here by keeping certain posts out of the Cabinet responsibility, thus making the tail move the head and not the head move the tail. Every High Court Judge should be appointed after considering the advice of the Premier of the State. Is not the Premier a person to be consulted? Who is to pay the State High Court Judge? Whose taxes are going to pay the local State High Court Judges? I submit this is unconstitutional. Every judge shall be appointed by the Governor after consultation with the Chief Justice and the chief Minister of the State and shall be from among the members of the Bar or the subordinate judiciary of the State. The states do really demand that judges shall be appointed from among the members serving the State. If we do not want judges from our own judiciary, why all this bother? In any Constitution you will see that there is reservation made for the members serving the State. It is in consonance with what we call devolution. You want to take away the State rights. You want to take away the highest office also. This is not consistent. There is really something suspicious in not allowing the Cabinet here to make the appointment of High Court Judges."

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p.m.

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—"I second the amendment, Sir. In doing so, I wish to say a few words. There seems to be some superiority complex in the North and they look down upon the people of the South. In cases like this, the States must be allowed autonomy. There is a tendency on the part

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of the Centre to capture all power and make the States helpless. What the amendment of my hon. Friend Mr. Narayanaswami Nayudu seeks to do is to snatch away as much power as possible from the Centre so that the States may get greater power and greater freedom. I second the amendment, Sir."

SRI M. NARAYANA RAO :—" Sir, I want to make a few observations. I am really disappointed to find mention of High Court and Supreme Court in the Draft Constitution. I thought that panchayats would be able to deal with all these things and that justice would be rendered to the people by panchayats and that costly and ruinous litigation would be avoided. The Congress stand is that justice should be rendered on the spot by the people who know the circumstances of the case. I feel that people should not go beyond the district to get justice. This ruinous litigation of coming to Madras, going to Delhi, etc., should be avoided as far as possible. I appeal to the framers of this Constitution that all mention of High Court and Supreme Court should be deleted. Panchayats should be made to administer justice. The man's lies are truth in court. I want to say that the men who know the real truth should render justice. It may even be a tribunal. There are two parties fighting for justice. They may elect a Chairman and he may decide the case. I do not know why High Court Judges, with Rs. 4,000 or Rs. 3,500 per mensem, should find place in the Draft Constitution. Mahatma Gandhi said that a Governor of a Province should sit in a hut with a spinning wheel, and that he should lead a modest, sincere and honest life. We see Governors getting a huge amount under this Constitution. I do not know why mention should be made of salaries of judges and Governors in this Constitution. In the same way, I do not know why so much money should be spent on the staff of High Court. I feel, Sir, that people should not be made to go beyond the district, at the maximum, to get justice."

SRI B. BHIMA RAO :—" I have already made my observations with regard to this. My object was that political influence should not prevail in the matter of appointments to the highest judicial authority. That was the object of my amendment. I think it will be free from political influence if powers were vested in the President."

SRI B. NARAYANASWAMI NAYUDU :—" I do not think there will be any political influence. But if there is anything, why not substitute local pressure for Delhi pressure?

" Then, Sir, I move—

' In Article 205, for the words " in consultation with the Governor of the State in which the High Court has the principal seat " substitute " in consultation and with the concurrence of the Governor and Chief Minister or any one of them of the State in which the High Court has the principal seat " . '

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“ Sir, Article 205 says :

“(1) The salaries, allowances and pensions payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the court in consultation with the Governor of the State in which the High Court has its principal seat.”

(2) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the court, and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the court shall form part of those revenues.

What this article substantially says is this : The Chief Justice of the High Court in consultation with the Governor shall fix the salaries not only of the judges but also of the Registrar and others of that establishment, and those salaries shall be a charge upon the revenues of the State. The persons who are really concerned with the raising of the taxes, i.e., the Cabinet, have no voice in it at all.”

THE HON. SRI B. GOPALA REDDI :—“ Sir, wherever the word ‘ Governor ’ occurs in this Constitution, it means ‘ Governor as advised by the Ministry.’ Otherwise the framers of the Constitution would have said ‘ Governor in his discretion ’ just as in the case of the Public Service Commission.”

SRI B. NARAYANASWAMI NAYUDU :—“ There are no words to show that the Governor acts in his discretion or not.”

THE HON. SRI B. GOPALA REDDI :—“ In the matter of the Public Service Commission, the Governor acts in his discretion.”

MR. PRESIDENT :—“ Who is to decide the point? ”

THE HON. SRI B. GOPALA REDDI :—“ It is the Ministry that advises the Governor and the Governor must accept the advice of the Ministry.”

SRI B. NARAYANASWAMI NAYUDU :—“ Governor means Governor acting in his discretion. If you want I shall read out that article.”

MR. PRESIDENT :—“ Where is it so said that Governor means Governor acting on the advice of the Ministry? ”

THE HON. SRI B. GOPALA REDDI :—“ I think it is in Article 143, Sir. Article 143 says :

“(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.”

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.”

In the old Federal Act there was mention of the Governor acting in his discretion. This was taken away in the Draft Constitution. But under sub-clause (2) he can say that a certain matter is in his discretion.”

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MR. PRESIDENT :—“ Where is the need for sub-clause (2)? Where is the doubt? How does it arise? ”

SRI B. NARAYANASWAMI NAYUDU :—“ May I ask the Hon. Finance Minister, who is also a Member of the Constituent Assembly, a question? Could he point out a single article wherein it is said that the Governor acts in his discretion? ”

THE HON. SRI B. GOPALA REDDI :—“ Yes, Sir; with regard to the appointment of the Members of the Public Service Commission.”

MR. PRESIDENT :—“ If everything is laid down clearly, which is in his discretion and which not where is the need for sub-clause (2).”

THE HON. SRI B. GOPALA REDDI :—“ The Governor is acting in his discretion when there is a grave emergency in the Province. Then he has to report the situation to the President. The sub-clause refers to a grave emergency like that. In ordinary administration, he has to act on the advice of the Ministry.”

SRI B. NARAYANASWAMI NAYUDU :—“ Wherever it is said ‘ Governor ’, it means that the Governor is acting in his discretion. But if it means ‘ Governor as advised by his Ministry ’ I have no objection. However I cannot vouch for the correctness of this unless I have studied the Constitution very well. My amendment is—

‘ in consultation and with the concurrence of the Governor and Chief Minister or any one of them of the State in which the High Court has the principal seat.’

If there is a conflict between the Chief Justice and the Chief Minister of a State, the Governor then may act in his own capacity without the aid of the Cabinet. This ought to be maintained.

“ Sir, I move my amendment to Article 223 (1) to substitute the following :—

‘ The legislature of a state has exclusive power to make any law not enumerated in the concurrent list or union list.’

Sir, about the residuary powers, there is no use in the residuary powers being left in the centre. Taking the analogy of confederated states, the residuary powers are for the most part left in the states. That is the practice in many countries in the world. For instance, so far as I can understand, the position in America is this. North America had all the residuary powers vested in the Centre but that Constitution was revised because it was thought that the residuary powers should not vest in the Centre. Similarly, in Australia, the residuary powers are vested in the states. Moreover, Sir, we are not a homogeneous race. There are the Telugus, the Sikhs, the Mahrattas and so many other races. Therefore, in order that there may be some form of homogeneity in the different areas of the country, the residuary powers should be vested in the Provinces. Sir, the real question is the question of sovereignty. It is a question whether the sovereignty should be vested in the states or not.

3rd May 1948]

[Sri B. Narayanaswami Nayudu]

Under this Constitution, the Centre has snatched every power. I submit, Sir, that the State legislatures are not a party to this Constitution. It has been forced upon us. No doubt, we should have a strong Centre. We should have a strong Centre, not for creating appointments, but for our defence, for safeguarding our frontiers and also for looking to matters relating to trade, etc.

Sir, I ask, has the state got powers of military conscription. It is a matter of vital importance to-day. We have got to have a national militia and the state must maintain its own militia. Therefore, Sir, it should be left to the state to form its own national militia. In forming such a militia, the Centre should not interfere and say that only the Sikhs who are the martial race should be recruited to such a militia and not the Tamils or the Telugus or the Mahrattas or other southerners because they are unfit to be recruited as members of the national militia. I, therefore, ask how is the sovereignty of the state to be maintained in the face of such interference and if the state is not given any power over these matters. We can sit in this House and talk but have we got the power to raise an army? No doubt, the Centre should be strong, but such powers with regard to matters relating to conscription, formation of national militia and others should be left in the states. Take for instance, the question of the appointment of the Commander of the Madras Forces. He is appointed only at the instance of the Central Government and the Provincial Government has no voice in the matter. Why cannot this power of recruitment to the armed forces be left in the Provinces so that they may accelerate the pace of recruitment for the national defence of the country? For these reasons, Sir, I submit that the residuary powers should be left in the Provinces. Sir, very wide powers have been taken away by the Centre and very little has been left with the Provinces. What they have left to the Provinces seems only to be a matter of grace. I, therefore, say that we should not be a party to this. We should not agree to the Centre being the inheritor of all the powers of the states and we should not be a party to such inheritance by the Centre. I therefore move my amendment."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I second it, Sir."

MR. PRESIDENT :—" The hon. Member may move his other amendments also."

SRI B. NARAYANASWAMI NAYUDU :—" They may be taken as read."

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I second them, Sir."

MR. PRESIDENT :—" We shall take all the other amendments of Mr. Narayanaswami Nayudu as read. The other amendments are—

(1) After the word 'State' in line 3 of Article 266, proviso (a), insert the words 'in any part of India outside the State.'

[Mr. President]

[3rd May 1948]

(2) *Omit* Article 284 (3).

(3) In Article 285 (1) and (2), *for* the word 'Governor', *substitute* the words 'Chief Minister' and *omit* the words 'in his discretion.'

(4) *For* the word 'Governor' in Article 286 (3), *substitute* the words 'the Chief Minister.'

"The House will now adjourn *sine die*."

The House then adjourned *sine die*.

III.—PAPERS LAID ON THE TABLE OF THE HOUSE.

(1) ^a Notification appended to G.O. No. 427, L.A., dated the 8th March 1948, regarding the constitution of the Bhimavaram (West Godapari) Municipality.

(2) Notification appended to G.O. No. 609, L.A., dated the 31st March 1948, constituting Tiruvallur (Chingleput) Municipality from the 1st April 1948.



^a Laid on the table of the House on 23rd April 1948.